48/chap.1/pt.52-99/990

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Federal Acquisition Regulations System

48

CHAPTER 1 (Parts 52 TO 99)
Revised as of October 1, 1990

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CHAPTER 1 (Parts 52 to 99)

Revised as of October 1, 1990

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OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 52.000 *refers to title 48, part 52, section 000.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 48—Federal Acquisition Regulations System is composed of seven volumes. The chapters in these volumes contain all current regulations and are arranged as follows: Chapter 1 (Parts 1 to 51), Chapter 1 (Parts 52 to 99), Chapter 2 (Parts 201 to 251), Chapter 2 (Parts 252 to 299), Chapters 3 to 6, Chapters 7 to 14 and Chapter 15 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

The Federal acquisition regulations in Chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through End are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of Chapters 2 through End are reserved for agency regulations *implementing* the Federal acquisition regulations in Chapter 1 and are numerically keyed to them. Parts 70 to 99 in Chapters 2 through End contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in § 1.105 of Chapter 1. For the convenience of the user, § 1.105 is reprinted in the Finding Aids section of the second volume containing Chapter 1 (Parts 52 to 99).

The two volumes containing Chapter 1 include a subject index to the Federal acquisition regulations. The second volume, containing Chapter 1 (Parts 52 to 99), includes contract clauses and forms. The volume containing Chapter 2 also contains a subject index to the Department of Defense regulations. The volume containing Chapters 7 to 14 includes a Distribution Table for Chapter 9.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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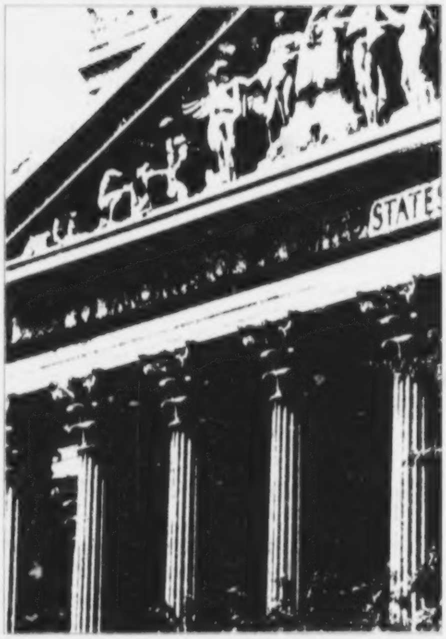

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52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
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52.252-4 Alterations in Contract.
52.252-5 Authorized Deviations in Provisions.
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Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42478, Sept. 19, 1983, unless otherwise noted.

52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

[48 FR 42478, Sept. 19, 1983; 48 FR 43273, Sept. 22, 1983, as amended at 55 FR 3887, Feb. 5, 1990]

Subpart 52.1—Instructions for Using Provisions and Clauses

52.100 Scope of subpart.

This subpart (a) gives instructions for using part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

[48 FR 42478, Sept. 19, 1983; 48 FR 43273, Sept. 22, 1983, as amended at 55 FR 3887, Feb. 5, 1990]

52.101 Using Part 52.

(a) *Definitions. Alternate* means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

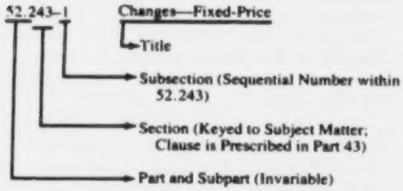
Contract clause or *clause* means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

Modification, as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

Solicitation provision or *provision* means a term or condition used only in solicitations and applying only before contract award.

Substantially as follows or *substantially the same as,* when used in the prescription and preface of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; *provided,* that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

(b) *Numbering.* (1) *FAR provisions and clauses.* Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with "52.2," since the texts of all FAR provisions and clauses appear in subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:


52.243-1
Changes—Fixed-Price
Title
Subsection (Sequential Number within 52.243)
Section (Keyed to Subject Matter; Clause is Prescribed in Part 43)
Part and Subpart (Invariable)

(2) *Provisions or clauses that supplement the FAR.*

(i) Provisions or clauses that supplement the FAR are—

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as a whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisiton and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, Code of Federal Regulations (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR staff; and

(B) The sequential number shall be "70" or a higher number (see 1.303).

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in subpart 52.2 of the agency acquisition regulation that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be "70" for the provision and "71" for the clause.

(c) *Prescriptions.* Each provision or clause in subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.

(d) *Prefaces.* Within subpart 52.2, each provision or clause is prefaced with (1) a cross-reference to the location in the FAR subject text that prescribes its use, and (2) directions for inserting it in solicitations and/or contracts.

(e) *Matrix.* (1) The matrix in subpart 52.3 contains a column for each principal type and/or purpose of contract (e.g., fixed-price supply, cost reimbursement research and development). The matrix lists the—

(i) Required solicitation provisions;

(ii) Required-when-applicable solicitation provisions;

(iii) Optional solicitation provisions;

(iv) Required contract clauses;

(v) Required-when-applicable contract clauses; and

(vi) Optional contract clauses.

(2) For each provision or clause listed, the matrix provides information on—

(i) Whether incorporation by reference is or is not authorized;

(ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;

(iii) Its number;

(iv) The citation of the FAR text that prescribes its use; and

(v) Its title.

(3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, contracting officers shall refer to the FAR text (cited in the matrix) that prescribes its use.

(4) The FAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) *Dates.* Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; e.g., (DEC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

[48 FR 42478, Sept. 19, 1983; 48 FR 43273, Sept. 22, 1983, as amended at 55 FR 3887, Feb. 5, 1990]

52.102 Incorporating provisions and clauses.

52.102-1 Incorporation by reference.

(a) Except as specified in 52.102-2, provisions and clauses may be incorporated by reference in solicitations and/or contracts if they are prescribed in—

(1) The FAR and are authorized to be incorporated by reference (see subpart 52.3); or

(2) An agency acquisition regulation published by—

(i) The Secretary of Defense for use throughout the Department of Defense (DOD); or

(ii) The head of an agency outside the DOD for agency-wide use.

(b) The provisions and clauses referred to in 52.102-1(a) should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they (1) are used with one or more alternates or on an optional basis, (2) are prescribed on a "substantially as follows" or "substantially the same as" basis; *provided*, that they are used verbatim, or (3) require modification or the insertion by the Government of fill-in material (see 52.104). However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Provisions or clauses may not be incorporated by reference by being listed in the (1) provision at 52.252-3, Alterations in Solicitations, or (2) clause at 52.252-4, Alterations in Contract.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48990, Nov. 28, 1989; 55 FR 3887, Feb. 5, 1990]

52.102-2 Incorporation in full text.

(a) A provision or clause shall be incorporated in solicitations and/or contracts in full text if it—

(1) Requires completion by the offeror or prospective contractor;

(2) Is a FAR provision or clause that will be used with an authorized deviation (see subpart 1.4);

(3) Is a FAR provision or clause that is not authorized to be incorporated by reference (see subpart 52.3);

(4) Is prescribed for use in an agency acquisition regulation published at levels below those specified in 52.102-1(a)(2);

(5) Is a special provision or clause of the type described in 52.101(b)(2)(i)(C);

(6) Will be used in a specific acquisition or class of acquisitions covered by a written determination of the chief of the contracting office to restrict the use of incorporation by reference for valid reasons; or

(7) Is prescribed on a "substantially as follows" or "substantially the same as" basis in the FAR or an agency acquisition regulation specified in 52.102-1(a)(2), but will not be used verbatim.

(b) Provisions and clauses of the type described in 52.101(b)(2)(i)(C), if developed by an organizational element below that of the agency headquarters level, shall be subject to agency oversight through the agency procedure required by 1.202.

(c) Provisions completed as annual representations and certifications are not required to be incorporated in solicitations in full text.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48990, Nov. 28, 1989; 55 FR 3887, Feb. 5, 1990]

52.103 Identification of provisions and clauses.

(a) Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert "(DEVIATION)" after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the (1) provision at 52.252-5, Authorized Deviations in Provisions, or (2) clause at 52.252-6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107(e) and (f).

(b) Any provision or clause that supplements the FAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert "(DEVIATION)" after the name of the regulation.

(c) A provision or clause of the type described in 52.101(b)(2)(i)(C) shall be identified by the title, date, and the name of the agency or suborganization within the agency that developed it.

(d) Except for provisions or clauses covered by 52.103(c), the following hypothetical examples illustrate how a provision or clause that supplements the FAR shall be identified when it is incorporated in solicitations and/or contracts by reference or in full text:

(1) If part 14 (Sealed Bidding) of the X Agency Acquisition Regulation, published in the FEDERAL REGISTER and codified as Chapter 99 in 48 CFR, prescribes the use of a provision entitled "Bid Envelopes," dated October 1983, and that provision is sequentially the first provision or clause appearing in Section 52.214 of the X Agency Acquisition Regulation, then the identification of that provision shall be "9952.214-70—Bid Envelopes (OCT 1983)."

(2) Assume that Y, a major organizational element of the X Agency, is authorized to issue the Y Acquisition Regulation, which is not published in the Federal Register and codified in 48 CFR. If part 36 (Construction and Architect-Engineer Contracts) of the Y Acquisition Regulation prescribes the use of a clause entitled "Refrigerated Display Cases," dated March 1983, pertaining to a specialized type of construction work, and that clause is sequentially the second provision or clause appearing in Section 52.236 of the Y Acquisition Regulation, then the identification of that clause shall be "52.236-71—Refrigerated Display Cases (MAR 1983)—Y Acquisition Regulation."

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 9039, Mar. 20, 1987]

52.104 Procedures for modifying and completing provisions and clauses.

(a) Provisions and clauses shall not be modified unless the FAR authorizes their modification. Any such authorizations are contained in the provision or clause preface in subpart 52.2; for example—

(1) "In the following clause, the stated 60-day period may be varied from 30 to 90 days"; or

(2) "'Task Order' or other appropriate designation may be substituted for 'Schedule' wherever that word appears in the clause."

(b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (e.g., paragraph, sentence, word), to clearly indicate what is being modified.

(c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.

(d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.

(e) When completing blanks in provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

52.105 Procedures for using alternates.

(a) A major variation in a provision or clause is accommodated by use of an alternate. All alternates to a given provision or clause are prescribed at the point in the FAR subject text where the provision or clause is itself prescribed. The alternates to each provision or clause are titled "Alternate I," "Alternate II," "Alternate III," and so on. In subpart 52.2, the instructions for using these alternates appear after the basic provision or clause. A statement of the manner of and conditions for its use is given for each alternate. This statement shall be read in conjunction with the preface to the provision or clause.

(b) When an alternate is used, its date shall be cited along with the date of the basic provision or clause; e.g., 52.209-3 FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (OCT 1983)—ALTERNATE I (DEC 1983).

(c) Under certain circumstances, a provision or clause may be used with two or more alternates. In these circumstances, each of the applicable alternates shall be cited, whether incorporated by reference or in full text; e.g., 52.209-3 FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (OCT 1983)—ALTERNATE I (DEC 1983) AND ALTERNATE II (FEB 1984). However, under no circumstances may an alternate to a specific provision or clause be applied to any other provision or clause.

52.106 Derivations of FAR provisions and clauses.

(a) Nearly all FAR provisions and clauses have been derived from Defense Acquisition Regulation (DAR) and/or Federal Procurement Regulations (FPR) provisions and clauses. In order to enable the user of this regulation to understand the derivation, a notation has been added at the bottom of each FAR provision or clause underneath the words "(End of provision)" or "(End of clause)." The notation shows the nature of the derivation by one of the following codes:

"NM" means *new material* not in the DAR or FPR.

"R" means the FAR coverage is *rewritten* from the DAR, FPR, or other material from which it is derived.

"AV" means the FAR coverage repeats a provision or clause in the DAR, FPR, or other source *almost verbatim*. In the text of the provision or clause, titles of organizations, officials, or documents are changed or personal pronouns deleted. The language is substantially the same, with no substantive differences from that of the DAR, FPR, or other provision or clause from which it is derived.

"V" means the FAR coverage repeats a DAR, FPR, or other provision or clause *verbatim*.

(b) In addition, when the derivation is from the DAR or FPR, the citation (and date when appropriate) of the DAR or FPR provision or clause from which the FAR material is derived has been included. The acronyms DAR and FPR have not been used when citing these former provisions or clauses, since their citations are distinctive: DAR citations generally begin "7-" and are dated, while the FPR citations all begin "1-" and are undated.

(c) When a provision or clause is revised or the FAR reissued, the derivation notations will be deleted.

52.107 Provisions and clauses prescribed in Subpart 52.1.

(a) The contracting officer shall insert the provision at 52.252-1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference.

(b) The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference.

(c) The contracting officer shall insert the provision at 52.252-3, Alterations in Solicitation, in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation.

(d) The contracting officer shall insert the clause at 52.252-4, Alterations in Contract, in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitations that apply to the contract phase, except for any clause authorized for use with a deviation.

(e) The contracting officer shall insert the provision at 52.252-5, Authorized Deviations in Provisions, in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert "(DEVIATION)" after the date of the provision.

(f) The contracting officer shall insert the clause at 52.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert "(DEVIATION)" after the date of the clause.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48990, Nov. 28, 1989]

Subpart 52.2—Texts of Provisions and Clauses

52.200 Scope of subpart.

This subpart sets forth the texts of all FAR provisions and clauses (see 52.101(b)(1)), and for each provision and clause, gives (a) a cross-reference to the location in the FAR that prescribes its use, and (b) directions for including it in solicitations and/or contracts.

52.201 [Reserved]

52.202-1 Definitions.

As prescribed in subpart 2.2, insert the following clause in solicitations and contracts except when (a) a fixed-price research and development contract that is expected to be $2,500 or less is contemplated or (b) a purchase order is contemplated. Additional definitions may be included; *provided*, they are consistent with this clause and the Federal Acquisition Regulation.

DEFINITIONS (APR 1984)

(a) *Head of the agency* (also called *agency head*) or *Secretary* means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term *authorized representative* means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) Except as otherwise provided in this contract, the term *subcontracts* includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

(R 7-103.1 1979 MAR)

(R 7-203.1)

(R 7-302.1)

(R 7-402.1)

(R 7-901.1)

(R 7-1902.1)

(R 7-1909.1)

Alternate I (APR 1984). If the contract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements, delete paragraph (c) of the basic clause.

(R 7-503.1)

(R 7-602.1 JUN 64)

(R 7-605.38)

(R 7.607.1)

(R 7-2101.1)

(R 1-7.602-1)

52.203-1 Officials Not to Benefit.

As prescribed in 3.102-2, insert the following clause in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22:

OFFICIALS NOT TO BENEFIT (APR 1984)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(End of clause)

(R 7-103.19 1949 JUL)

(R 1-7.102-17)

52.203-2 Certificate of Independent Price Determination.

As prescribed in 3.103-1, insert the following provision. If the solicitation is a Request for Quotations, the terms *Quotation* and *Quoter* may be substituted for *Offer* and *Offeror.*

(a) The acquisition is to be made under the small purchase procedures in part 13;

(b) The work is to be performed by foreign suppliers outside the United States, its possessions, and Puerto Rico;

(c) The solicitation is a request for technical proposals under two-step formal advertising procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

If the solicitation is a Request for Quotations, the terms *Quotation* and *Quoter* may be substituted for *Offeror* and *Offer.*

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above ________________

____

[*insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization*];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense:

GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-104.16 1952 MAR)

52.203-4 Contingent Fee Representation and Agreement.

As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)(6). If the solicitation is a Request for Quotations, the terms *Quotation* and *Quoter* may be substituted for *Offer* and *Offeror.*

CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984)

(a) *Representation.* The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror—

[Note. The offeror must check the appropriate boxes. For interpretation of the representation, including the term *bona fide employee,* see subpart 3.4 of the Federal Acquisition Regulation.]

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

(R 7-2002.1 1974 APR)

(R 1-1.505)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.203-5 Covenant Against Contingent Fees.

As prescribed in 3.404(c), insert the following clause in all solicitations and contracts.

COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) *Bona fide agency,* as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert i[illegible]oper influence to solicit or obtain Gove[illegible] contracts nor holds itself out as being [illegible]le to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

(R 7-103.20 1958 JAN)

(R 1-1.503)

(R 1-7.102-18)

52.203-6 Restrictions on Subcontractor Sales to the Government.

As prescribed in 3.503-2, insert the following clause:

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1985)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

[50 FR 35479, Aug. 30, 1985, and 51 FR 27116, July 29, 1986]

52.203-7 Anti-Kickback Procedures.

As prescribed in 3.502-3, insert the following clause:

ANTI-KICKBACK PROCEDURES (OCT 1988)

(a) Definitions.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor, as used in this clause, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

Subcontract, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under under this contract.

[52 FR 6122, Feb. 27, 1987, as amended at 53 FR 34228, Sept. 2, 1988; 53 FR 36028, Sept. 16, 1988]

52.203-8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104-10(a), insert the following provision:

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (SEP 1990)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation of possible violation of subsection 27(a), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (solicitation number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST)

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(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of the officer or employee responsible for the offer and date]

[Typed name of the officer or employee responsible for the offer]

*The Act became effective on December 1, 1990.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c)(1) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission except for procurements using two-step sealed bidding procedures (see subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(2) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract and contract modification and all options (see 3.104-4(e)) exceeds $100,000.

(3) Failure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive.

(d) Pursuant to FAR 3.104-9(d), the Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of an award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

(End of provision)

Alternate I (SEP 1990). Procurements using other than sealed bidding procedures:

(c) For procurements, including contract modifications, in excess of $100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful Offeror to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification:

(1) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(3) A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(4) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds $100,000.

(5) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contracting Officer prior to the award of a contract to the SBA.

(6) Failure of an Offeror to submit the signed certificate within the time prescribed by the Contracting Officer shall cause the offer to be rejected.

[55 FR 36796, Sept. 6, 1990]

52.203-9 Requirement for Certificate of Procurement Integrity—Modification.

As prescribed in 3.104-10(b), insert the following clause:

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (SEP 1990)

(a) *Definitions.* The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (SEP 1990)

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as *the Act*), as implemented in the FAR, occurring during the conduct of this procurement (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet), enter NONE if none exists)

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[Signature of the officer or employee responsible for the modification proposal and date]

[Typed name of the officer or employee responsible for the modification proposal]

*The Act became effective on December 1, 1990.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

[55 FR 36797, Sept. 6, 1990]

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104-10(c) insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee conrtracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[55 FR 36797, Sept. 6, 1990]

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(End of provision)

[55 FR 3193, Jan. 30, 1990]

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) *Definitions.*

Agency, as used in this clause, means executive agency as defined in 2.101.

Covered Federal action, as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and *tribal organization,* as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Reasonable compensation, as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment, as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient, as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.* (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(*1*) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(*2*) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(*1*) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(*2*) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(*3*) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivison (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(*1*) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(*2*) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, *professional and technical services* shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A) (*1*) and (*2*) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.* (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding $100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

[55 FR 3193, Jan. 30, 1990, as amended at 55 FR 38517, Sept. 18, 1990]

52.203-13 Procurement Integrity-Service Contracting.

As prescribed in 3.104-10(d), insert the following clause:

PROCUREMENT INTEGRITY—SERVICE CONTRACTING (SEP 1990)

(a) *Definitions.* The definitions in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement officials, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsection 27 (a), (b), (d), or (f) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modifications in excess of $100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

[55 FR 36797, Sept. 6, 1990]

52.204-1 Approval of Contract.

As prescribed in 4.103, insert the following clause:

APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of . . . . . [*identify title of designated agency official here*] and shall not be binding until so approved.

(End of clause)

[54 FR 5058, Jan. 31, 1989, as amended at 54 FR 48990, Nov. 28, 1989]

52.204-2 Security Requirements.

As prescribed in 4.404(a), insert the following clause in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in 4.404(d) apply:

SECURITY REQUIREMENTS (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified *Confidential, Secret,* or *Top Secret.*

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the *Department of Defense Industrial Security Manual For Safeguarding Classified Information* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

(R 7-104.12 1971 APR)

(R7-204.12 1971 APR)

(R 7-702.29 1973 APR)

(R 7-704.22 1976 JULY)

(R 7-902.3 1976 JULY)

Alternate I (APR 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

(R 7-402.24, clause paragraphs (e), (f), and (g) 1971 APR)

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

TAXPAYER IDENTIFICATION (SEP 1989)

(a) *Definitions.*

Common parent, as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Corporate status, as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

Taxpayer Identification Number (*TIN*), as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) The offeror is required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to reporting requirements described in 4.902(a), the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) *Taxpayer Identification Number* (*TIN*).

( ) TIN: ________.

( ) TIN has been applied for.

( ) TIN is not required because:

( ) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

( ) Offeror is an agency or instrumentality of a foreign government;

( ) Offeror is an agency or instrumentality of a Federal, state or local government;

( ) Other. State basis. ________.

(d) *Corporate Status.*

( ) Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

( ) Other corporate entity;

( ) Not a corporate entity;

( ) Sole proprietorship

( ) Partnership

( ) Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) *Common Parent.*

( ) Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

( ) Name and TIN of common parent:

Name ________________________

TIN ________________________

(End of provision)

[53 FR 43394, Oct. 26, 1988, as amended at 54 FR 34757, Aug. 21, 1989]

52.204-4 Contractor Establishment Code.

As prescribed in 4.603, insert the following provision:

CONTRACTOR ESTABLISHMENT CODE (AUG 1989)

In the block with its name and address, the offeror should supply the Contractor Establistment Code applicable to that name and address, if known to the offerer. The number should be preceded by *CEC:* Offerors should take care to report the correct CEC and not a similar number assigned to the Offeror in a different system.

The CEC is a 9-digit code assigned to a contractor establishment that contracts with a Federal executive agency. The CEC system is a contractor identification coding system which is currently the Dun and Bradstreet Data Universal Numbering System (DUNS). The CEC system is distinct from the Federal Taxpayer Identification Number (TIN) system.

The Government will obtain a Contractor Establishment Code for any awardee that does not have or does not know its CEC.

(End of provision)

[54 FR 29283, July 11, 1989]

52.205—52.206 [Reserved]

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

NOTICE OF COST COMPARISON (SEALED-BID) (JUL 1990)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost-comparison form. The abstract of bids, completed cost-comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review.

(c) ——— [*insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))*] working days beginning with the date the documents are available to interested parties will be provided for this public review. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25530, June 21, 1990]

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

NOTICE OF COST COMPARISON (NEGOTIATED) (JUL 1990)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost-estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost-comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost-comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of ——— [*insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))*] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below). The Government assumes no liability for costs incurred during the periods

specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost-comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of —— [*insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3)*] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) The Government will not make a final determination either for contract or Government performance during the public review period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. This review will be completed within 30 days after the Contracting Officer receives the requests. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25530, June 21, 1990]

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT (APR 1984)

The Contractor shall give Government employees displaced as a result of the conversion to contract performance the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(End of clause)

(R 7-104.104 1980 MAY)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 9039, Mar. 20, 1987]

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

ECONOMIC PURCHASE QUANTITY—SUPPLIES (AUG 1987)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

OFFEROR RECOMMENDATIONS

Item	Quantity	Price quotation	Total

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

[50 FR 35479, Aug. 30, 1985, as amended at 52 FR 30078, Aug. 12, 1987]

52.208-1 Required Sources for Jewel Bearings and Related Items.

As prescribed in 8.203-1(a), insert the following clause in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in 8.203-1(b), except as provided in 8.203-1(a)(1) through (3):

REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) *Jewel bearing*, as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

Plant, as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, ND 58367 (Phone: 701-477-3193).

Price list, as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Adminstration for jewel bearings produced by the Plant.

Related item, as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)

(R 7-104.37 1977 NOV)

(R 1-1.319(e))

52.208-2 Jewel Bearings and Related Items Certificate.

As prescribed in 8.203-1(c), insert the following provision in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development:

JEWEL BEARINGS AND RELATED ITEMS CERTIFICATE (APR 1984)

(a) This is to certify that—

(1) Jewel bearings and/or related items, as defined in the Required Sources for Jewel Bearings and Related Items clause, will be incorporated into one or more items/will

not be incorporated into any item [*delete one*] covered by this offer;

(2) Any jewel bearings required (or an equal quantity of the same type, size, and tolerances) will be ordered from the William Langer Plant, Rolla, ND 58367, as provided in the Required Sources for Jewel Bearings and Related Items clause; and

(3) Any related items required (or an equal quantity of the same type, size, and tolerances) will be acquired from domestic manufacturers, including the Plant, if the items can be obtained from those sources.

(b) Attached to this certificate are estimates of the quantity, type, and size (including tolerances) of the jewel bearings and related items required, and identification of the components, subassemblies, or parts that require jewel bearings or related items.

Date of Execution ——————————
Solicitation No. ——————————
Name ——————————
Title ——————————
Firm ——————————
Address ——————————

(End of provision)

(R 1-2207.2 DPC 76-13 1977 NOV)

(R 1-2207.2(c)(3))

52.208-3 Conflicts.

As prescribed in 8.309(a), insert the following clause in solicitations and contracts for utility services:

CONFLICTS (APR 1984)

To the extent of any inconsistency between the terms of this contract and any schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)

(R S5-203.2(7) OCT 1974)

(AV 1-4.410-5(a)(10) FEB 1980)

52.208-4 Vehicle Lease Payments.

As prescribed in 8.1104(a), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

VEHICLE LEASE PAYMENTS (APR 1984)

(a) Upon the submission of proper invoices or vouchers, the Government shall pay rent for each vehicle at the rate(s) specified in this contract.

(b) Rent shall accrue from the beginning of this contract, or from the date each vehicle is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor's failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government's possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)

(R 7-1501.1 1967 APR)

52.208-5 Condition of Leased Vehicles.

As prescribed in 8.1104(b), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the Contracting Officer, the Government may (a) by contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby, or (b) terminate the contract under the Default clause of this contract.

(End of clause)

(R 7-1501.2 1967 APR)

52.208-6 Marking of Leased Vehicles.

As prescribed in 8.1104(c), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)

(R 7-1501.5 1967 APR)

52.208-7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

TAGGING OF LEASED VEHICLES (MAY 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

[51 FR 19717, May 30, 1986]

52.209-1 Qualification Requirements.

As prescribed in 9.206-2, insert the following clause:

QUALIFICATION REQUIREMENTS (OCT 1988)

(a) Definition: *Qualification Requirement*, as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name)————————————

(Address) ————————————

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name ————————————

Manufacturer's Name ————————————

Source's Name————————————

Item Name ————————————

Service Identification ————————————

Test Number ————————————

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

[53 FR 34229, Sept. 2, 1988; 53 FR 36028, Sept. 16, 1988]

52.209-3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1 (a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (SEP 1989)

[*Contracting Officer shall insert details*]

(a) The Contractor shall test ——— unit(s) of Lot/Item ——— as specified in this contract. At least ——— calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within ——— calendar days from the date of this contract to ——— [*insert address of the Government activity to receive the report*] marked "FIRST ARTICLE TEST REPORT: Contract No. ———, Lot/Item No. ——— ." Within ——— calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308-1 (a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (SEP 1989). As prescribed in 9.308-1 (a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989; 55 FR 25531, June 21, 1990]

52.209-4 First Article Approval—Government Testing.

As prescribed in 9.308-29 (a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—
GOVERNMENT TESTING (SEP 1989)

[*Contracting Officer shall insert details*]

(a) The Contractor shall deliver ——— units(s) of Lot/Item ——— within ——— calendar days from the date of this contract to the Government at ——— [*insert name and address of the testing facility*] for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

(b) Within ——— calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308-2 (a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (SEP 1989). As prescribed in 9.308-2 (a)(3) and (b)(3) substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989]

52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As prescribed in 9.409(a), insert the following provision:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAY 1989)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ( ) has not ( ), within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

[54 FR 19827, May 8, 1989]

52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (MAY 1989)

(a) The Government suspends or debars Contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of $25,000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a Contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the list of Parties Excluded from Procurement Programs), a corporate officer or designee of the Contractor shall notify the Contracting Officer, in writing, before entering into such subcontract. The notice must include the following:

(1) The name of the subcontractor;

(2) The Contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(b) The Contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see FAR subpart 44.3).

(End of clause)

[54 FR 19827, May 8, 1989]

52.210-1 Availability of Specifications Listed in the Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Specifications Unit, 7th & D Sts., SW., Washington, DC 20407 (Tel. 202-708-9205 or 708-7140), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta GA; Chicago, IL; Kansas City, MO; Ft. Worth, TX; San Francisco, CA; Los Angeles, CA; and Auburn, WA. Additional copies may be purchased from the GSA Specifications Unit in Washington, DC.

(b) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(End of provision)

[53 FR 17860, May 18, 1988, as amended at 55 FR 38517, Sept. 18, 1990]

52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).

As prescribed in 10.011(b), insert the following provision in solicitations that (a) are issued by DOD contracting offices and (b) cite specifications listed in the DODISS that are not furnished with the solicitation:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) (APR 1984)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. In case of urgency, telephone or telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Standardization Document, Order Desk,
Building 4, Section D, 700 Robbins Avenue,
Philadelphia, PA 19111-5094
Telex Number: 834295
Western Union Number: 710-670-1685

Telephone Number: (215) 697-3321 (Express shipment pickup)

Telephone Order Entry System (TOES) Numbers: 215-697-1187 through and including 215-697-1197

(End of provision)

(R 1-1203.2)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(c), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation may be obtained from:
(Activity) address)——————————
——————————————————
——————————————————
(Telephone number) ——————————
(Person to be contacted) ——————————

The request should identify the solicitation number and the specification requested by date, title, and number, as cited in the solicitation.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17860, May 18, 1988]

52.210-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(d), insert a provision substantially the same as the following:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation are not available for distribution. However, they may be examined at the following location(s):

(ACTIVITY)——————————
(COMPLETE ADDRESS)——————————
——————————————————
——————————————————
(TELEPHONE NUMBER) ——————————
(PERSON TO BE CONTACTED) ——————————
(TIME(S) FOR VIEWING)——————————

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17860, May 18, 1988]

52.210-5 New Material.

As prescribed in 10.011(e), insert the following clause in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose. The contracting officer may insert the clause in solicitations and contracts for services that may involve incidental furnishing of parts.

NEW MATERIAL (APR 1984)

Unless this contract specifies otherwise, the Contractor represents that the supplies and components, including any former Government property identified under the Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to the Government if the Contracting Officer authorizes the use of used or reconditioned supplies or components.

(End of clause)

(SS 7-104.48 1965 JAN)

52.210-6 Listing of Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property.

As prescribed in 10.011(f), insert the following provision in solicitations for supplies, unless, in the judgment of the contracting officer, the provision would serve no useful purpose. The contracting officer may insert the provision in solicitations for services that may involve the incidental furnishing of parts.

LISTING OF USED OR RECONDITIONED MATERIAL, RESIDUAL INVENTORY AND FORMER GOVERNMENT SURPLUS PROPERTY (APR 1984)

(a) If the offeror proposes to furnish items or components which are used or reconditioned material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer: a complete description of the items or components; quantity; name of Government agency from which acquired; and date of acquisition, if applicable. No used, reconditioned, residual inventory, or former Government surplus property other than that listed on the attachment shall be furnished under the resulting contract unless authorized in writing by the Contracting Officer.

(b) All items to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)

(R 7-104.49 1965 JAN)

52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(g), insert the following clause in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose. The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

USED OR RECONDITIONED MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (APR 1984)

(a) The Contractor shall not furnish any item or component which is used or reconditioned material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such item or component was listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(b) All items or components furnished under this contract shall comply with the terms and specifications contained in the contract.

(End of clause)

(R 7-104.49 1965 JAN)

52.211 [Reserved]

52.212-1 Time of Delivery.

As prescribed in 12.104(a)(2), the contracting officer may insert a clause substantially as follows in solicitations and contracts for supplies or services if the Government requires delivery by a particular time and the delivery schedule is to be based on the date of the contract:

TIME OF DELIVERY (APR 1984)

(a) The Government requires delivery to be made according to the following schedule:

REQUIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

The Government will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. The Government reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an offeror offers an earlier delivery schedule than required above. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

(R 7-104.92(b) 1974 APR)

(R 1-1.316-5)

(R 1-1.316-4(c))

Alternate I (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting *on or before*; *during the months* —; or *not sooner than — or later than* — as headings for the third column of paragraph (a) the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the Government will make award by ——— [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

(R 7-104.92(e) 1974 APR)

(R 1-1.316-4(b)(1))

Alternate II (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting *within days after the date of receipt of a written notice of award* as the heading for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by ——— [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges receipt of notice of award.

(R 7-104.92(e)(2) 1974 APR)

(R 1-1.316-4(b)(2))

Alternate III (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph (b) of the basic clause. The time may be expressed by substituting *within days after the date of receipt of a written notice of award* as the heading for the third column of paragraph (a) of the basic clause.

52.212-2 Desired and Required Time of Delivery.

As prescribed in 12.104(a)(3), the contracting officer may insert a clause substantially as follows in solicitations and contracts for supplies or services if the Government desires delivery by a certain time, but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract:

DESIRED AND REQUIRED TIME OF DELIVERY (APR 1984)

(a) The Government desires delivery to be made according to the following schedule:

DESIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
________	________	________
________	________	________

DESIRED DELIVERY SCHEDULE—Continued

[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
________	________	________

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government's required delivery schedule as follows:

REQUIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
________	________	________
________	________	________
________	________	________

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
________	________	________
________	________	________
________	________	________

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

(R 7-104.92(c) 1974 APR)

(R 1-1.316-5(c))

(R 1-1.316-4(c))

Alternate I (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting *on or before*; *during the months* —— ; or *not sooner than* —, *or later than* — as headings for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the Government will make award by ———— [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

(R 7-104.92(e) 1974 APR)

(R 1-1.316-4(b)(1))

Alternate II (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor receives notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting *within days after the date of receipt of a written notice of award* as the heading of the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by ——— [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges receipt of notice of award.

(R 7-104.92(e)(2) 1974 APR)

(R 1-1.316-4(b)(2))

Alternate III (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph (b) of the basic clause. The time may be expressed by substituting *within days after the date of receipt of a written notice of award* as the heading of the third column of paragraph (a) of the basic clause.

52.212-3 Commencement, Prosecution, and Completion of Work.

As prescribed in 12.104(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within ——— [*Contracting Officer insert number*] calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than ——*. The time stated for completion shall include final cleanup of the premises.

(End of clause)

(R 7-602.44(a) 1965 JAN)

*The Contracting Officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date.

Alternate I (APR 1984). If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, add the following paragraph to the basic clause:

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by ——— [*Contracting Officer insert date*]. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(R 7-602.44(b) 1968 APR)

52.212-4 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 12.204(a), the contracting officer may insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, services, or research and development (see 12.202):

LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (APR 1984)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of ——— [*Contracting Officer insert amount*].

(b) Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part under the Default-Fixed-Price Supply and Service clause in this contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination clause.

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default-Fixed-Price Supply and Service clause in this contract.

(End of clause)

(R 7-105.5 1969 AUG)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48990, Nov. 28, 1989]

52.212-5 Liquidated Damages—Construction.

As prescribed in 12.204(b), the contracting officer may insert the following clause in solicitations and contracts for construction, except contracts on a cost-plus-fixed-fee basis (see 12.202):

LIQUIDATED DAMAGES—CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of ——— [*Contracting Officer insert amount*] for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)

(R 7-602.5 1969 AUG)

(R 1-18.110(a))

(R 7-603.39 1965 JAN)

(R 1-8.709-1)

Alternate I (APR 1984). If different completion dates are specified in the contract for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(R 7-603.39 1977 NOV)

52.212-6 Time Extensions.

As prescribed in 12.204(c), insert the following clause in solicitations and contracts for construction in which the clause at 52.212-5, Liquidated Damages—Construction, is used with its Alternate I:

TIME EXTENSIONS (APR 1984)

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

(AV 7-603.36 1965 JAN)

52.212-7 Notice of Priority Rating for National Defense Use.

As prescribed in 12.304(a), insert the following provision:

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)

Any contract awarded as a result of this solicitation will be a [ ] DX rated order; [ ] DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR part 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

[51 FR 19717, May 30, 1986, as amended at 55 FR 38518, Sept. 18, 1990]

52.212-8 Defense Priority and Allocation Requirements.

As prescribed in 12.304(b), insert the following clause:

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR part 700).

(End of clause)

[51 FR 19717, May 30, 1986, as amended at 55 FR 38518, Sept. 18, 1990]

52.212-9 Variation in Quantity.

As prescribed in 12.403(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, and for services that involve the furnishing of supplies:

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

———— Percent increase [*Contracting Officer insert percentage*]

———— Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to ————*

(End of clause)

(R 7-103.4(a) 1949 JUL)

(R 7-103.4(b) 1965 APR)

*Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

52.212-10 Delivery of Excess Quantities.

As prescribed in 12.403(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989]

52.212-11 Variation in Estimated Quantity.

As prescribed in 12.403(c) insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

(R 7-603.27 1968 APR)

52.212-12 Suspension of Work.

As prescribed in 12.505(a), insert the following clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated:

SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

(R 7-602.46 1968 FEB)

52.212-13 Stop-Work Order.

As prescribed in 12.505(b), insert the following clause. The *90-day* period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the conveninece of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

Alternate I (APR 1984). If this clause is inserted in a cost-reimbursement contract, substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected for the words *an equitable adjustment in the delivery schedule or contract price, or both.*"

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 2272, Jan. 15, 1985; 54 FR 29283, July 11, 1989]

52.212-14 Stop-Work Order—Facilities.

As prescribed in 12.505(c), insert the following clause. The *90-day* period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER—FACILITIES (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at Government expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination of Work clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 29283, July 11, 1989]

52.212-15 Government Delay of Work.

As prescribed in 12.505(d), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

(AV 7-104.77 1968 SEP)

52.213-1 Fast Payment Procedure.

As prescribed in 13.305, insert the following clause:

FAST PAYMENT PROCEDURE (AUG 1988)

(a) *General.* Invoices will be paid on the basis of the Contractor's delivery to a post office or common carrier (or, in shipment by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than Postal Service or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall assume all responsibility and risk of loss for supplies (1) not received at destination, (2) damaged in transit, or (3) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct those supplies promptly at the Contractor's expense, but only if instructions to do so are furnished by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery of supplies to a post office or common carrier, (or, in shipments by other means, the point of first receipt by the Government) the Contractor shall prepare an invoice as provided in this contract, order, or blanket purchase agreement. In addition, the invoice shall be prominently marked *FAST PAY.*

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of 3 years and to furnish the bills to the Government when requested for audit purposes.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report on a prescribed form, the Contractor has the option of either preparing the receiving report on the prescribed form or including the following information on the invoice, in addition to that required in subparagraph (c)(1) above:

(i) A statement in prominent letters *NO RECEIVING REPORT PREPARED.*

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level, (A) national stock number and/or manufacturer's part number, (B) unit of measure, (C) Ship-To Point, (D) Mark-For Point if in contract, and (E) FEDSTRIP/MILSTRIP document number if in contract.

(4) If this contract, order or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the invoice will include at the line item level information at the line item level in addition to that required in subparagraph (c)(1) above:

(i) Ship-To-Point.

(ii) Mark-For-Point.

(iii) FEDSTRIP/MILSTRIP document number if in contract, in addition to that required in subparagraph (c)(1) above.

(5) Where a receiving report is not required, a copy of the invoice will be included in each shipment.

(d) *Certification of invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identification.* All outer shipping containers shall be marked *FAST PAY.*

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 27468, July 20, 1988; 53 FR 36028, Sept. 16, 1988]

52.213-2 Invoices.

As prescribed in 13.507(c), insert the following clause in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage):

INVOICES (APR 1984)

The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state (a) the starting and ending dates of the subscription delivery, and (b) either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

(AV 7-2003.45 1974 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986]

52.213-3 Notice To Supplier.

As prescribed in 13.507(d), insert the following clause in unpriced purchase orders:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

(AV 7-2003.46 1971 NOV)

52.214-1 Solicitation Definitions—Sealed Bidding.

As prescribed in 14.201-6(b)(1), insert the following provision:

SOLICITATION DEFINITIONS—SEALED BIDDING (JUL 1987)

Offer means *bid* in sealed bidding.

Solicitation means an invitation for bids in sealed bidding.

Government means United States Government.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 9039, Mar. 20, 1987]

52.214-2 Type of Business Organization—Sealed Bidding.

As prescribed in 14.201-6(b)(2), insert the following provision in all invitations for bids:

TYPE OF BUSINESS ORGANIZATION—SEALED BIDDING (JUL 1987)

The bidder, by checking the applicable box, represents that—

(a) It operates as / / a corporation incorporated under the laws of the State of , / / an individual, / / a partnership, / / a nonprofit organization, or / / a joint venture; or

(b) If the bidder is a foreign entity, it operates as / / an individual, / / a partnership, / / a nonprofit organization, / / a joint venture, or / / a corporation, registered for business in country.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 9039, Mar. 20, 1987]

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.201-6(b)(3), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

[53 FR 43394, Oct. 26, 1988, as amended at 54 FR 48990, Nov. 28, 1989]

52.214-4 False Statements in Bids.

As prescribed in 14.201-6(b)(4), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

(R 2-201(b)(XIII))

(R 1-2.201(a)(11))

52.214-5 Submission of Bids.

As prescribed in 14.201-6(c)(1), insert the following provision:

SUBMISSION OF BIDS (DEC 1989)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(c) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(End of provision)

[54 FR 48991, Nov. 28, 1989, as amended at 55 FR 3887, Feb. 5, 1990]

52.214–6 Explanation to Prospective Bidders.

As prescribed in 14.201–6(c)(2), insert the following provision:

EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

(R SF 33A, Para 3, 1978 JAN)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25531, June 21, 1990]

52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.

As prescribed in 14.201–6(c)(3), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (DEC 1989)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids. The term *working days* excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. *Postmark* means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the *Express Mail Next Day Service-Post Office to Addressee* label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. *Postmark* has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled *Facsimile Bids*. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

[54 FR 48991, Nov. 28, 1989]

52.214-8 [Reserved]

52.214-9 Failure to Submit Bid.

As prescribed in 14.201-6(e)(1), insert the following provision in invitations for bids except those for construction:

FAILURE TO SUBMIT BID (APR 1984)

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

(R SF 33A, Para 6, 1978 JAN)

52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e)(2), insert the following provision:

CONTRACT AWARD—SEALED BIDDING (JUL 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. *Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.*

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25531, June 21, 1990]

52.214-11 [Reserved]

52.214-12 Preparation of Bids.

As prescribed in 14.201-6(f), insert the following provision:

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the *Amount* column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

(R SF 33A, Para 2, 1978 JAN)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986]

52.214-13 Telegraphic Bids.

As prescribed in 14.201-6(g)(1), insert the following provision:

TELEGRAPHIC BIDS (APR 1984)

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bids.

(e) The term *telegraphic bids*, as used in this provision, includes mailgrams.

(End of provision)

(R 7-2003.29 1964 MAR)

Alternate I (NOV 1988). As prescribed in 14.201-6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR, 43394, Oct. 26, 1988]

52.214-14 Place of Performance—Sealed Bidding.

As prescribed in 14.201-6(h), insert the following provision:

PLACE OF PERFORMANCE—SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks *intends* in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Bidder

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-15 Period for Acceptance of Bids.

As prescribed in 14.201-6(i), insert the following provision:

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within ——— calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

(R SF33 1977 MAR)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48991, Nov. 28, 1989]

52.214-16 Minimum Bid Acceptance Period.

As prescribed in 14.201-6(j), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) *Acceptance period*, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of —— calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: .... calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

(End of provision)

(R 2-201(a) Sec. L(xvii) (A) and (B) 1975 MAR)

(R 2-201(b)(xii)(B) 1975 MAR)

(R 1-2.201(a)(15))

52.214-17 Affiliated Bidders.

As prescribed in 14.201-6(k), insert the following provision:

AFFILIATED BIDDERS (APR 1984)

(a) Business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of clause)

(R 7-2003.12 1974 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-18 Preparation of Bids—Construction.

As prescribed in 14.201-6(l), insert the following provision:

PREPARATION OF BIDS—CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words *no bid* in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

(R SF 22, Para 5, 1978 FEB)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25531, June 21, 1990]

52.214-19 Contract Award—Sealed Bidding—Construction.

As prescribed in 14.201-6(m), insert the following provision:

CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION (FEB 1986)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52434, Dec. 23, 1985]

52.214-20 Bid Samples.

As prescribed in 14.201-6(o)(1), insert the following provision in invitations for bids if bid samples are required:

BID SAMPLES (APR 1984)

(a) *Bid samples* are item sample submissions required of bidders to show those characteristics of the offered products that cannot adequately be described by specifications or purchase descriptions (e.g., balance, facility of use, or pattern).

(b) Bid samples, required elsewhere in this solicitation, must be furnished as part of the bid and must be received by the time specified for receipt of bids. Failure to furnish samples on time will require rejection of the bid, except that a late sample sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) Bid samples will be tested or evaluated to determine compliance with all the characteristics listed for examination in this solicitation. Failure of these samples to conform to the required characteristics will require rejection of the bid. Products delivered under any resulting contract must conform to (1) the approved sample for the characteristics listed for test or evaluation and (2) the specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be (1) submitted at no expense to the Government, and (2) returned at the bidder's request and expense, unless they are destroyed during preaward testing.

(End of provision)

(R 7-2003.30(a) 1974 APR)

(R 1-2.202-4))

(R 2-202.4 1980 OCT)

(R SF 33A 1978 JAN)

Alternate I (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product *does not* necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the ——— [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*], and (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

(R 7-2003.30(b) 1974 APR)

(R 1-2.202-4)

Alternate II (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the ——— [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*] on a previous acquisition, (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation, and (3) the product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

(R 7-2003.30(b) 1974 APR)

52.214-21 Descriptive Literature.

As prescribed in 14.201-6(p)(1), insert the following provision in invitations for bids if (a) descriptive literature is required to evaluate the technical acceptability of an offered product and (b) the required information will not be readily available unless it is submitted by bidders:

DESCRIPTIVE LITERATURE (APR 1984)

(a) *Descriptive literature* means information (e.g., cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective Contractor or for operating or maintaining equipment.

(b) Descriptive literature, required elsewhere in this solicitation, must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in this solicitation for receipt of bids. Failure to submit descriptive literature on time will require rejection of the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid.

(End of provision)

(R 7-2003.31(a) UNDATED)

(R 1-2.202-5(d))

Alternate I (APR 1984). If the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation, add the following paragraphs (d) and (e).

(d) At the discretion of the Contracting Officer, the requirement for furnishing descriptive literature under this solicitation may be waived for any bidder that makes an affirmative representation in subparagraph (d)(1) below, if the Contracting Officer determines that the product supplied by the bidder under a prior contract meets the requirements of this solicitation.

(1) The bidder represents that it ☐ has, ☐ has not [*check applicable box*] supplied a product to the ——— [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*] under a prior contract that is the same as the product offered under this solicitation for which descriptive literature is required.

(2) If the bidder checked *has* in paragraph (d)(1) above, and seeks a waiver of the requirement for submitting descriptive literature, the bidder must fill in the following information:

Prior contract number ———————

Date of prior contract ———————

Contract line item number of product supplied ———————

Name and address of government activity to which delivery was made ———————

Date of final delivery of product supplied —

(e) Bidders must submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (d) above. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. A bidder's request for a waiver under paragraph (d) above will be disregarded if that bidder has submitted the descriptive literature required under this solicitation.

(R 1-2003.31(b) UNDATED)

(R 2.202-5(e))

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in 14.201-6(q), insert the following provision:

EVALUATION OF BIDS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 3887, Feb. 5, 1990]

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.

As prescribed in 14.201-6(r), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (DEC 1989)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of technical proposals (e.g., technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 P.M. at the place of mailing 2 working days prior to the date specified for receipt of technical proposals. The term *working days* excludes weekends and U.S. Federal holidays; or

(4) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled *Facsimile Bids.*

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled *Facsimile Bids.* Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of a technical proposal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date, or the technical proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. *Postmark* means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the *Express Mail Next Day Service-Post Office to Addressee* label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. *Postmark* has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(End of provision)

[54 FR 48991, Nov. 28, 1989]

52.214-24 Multiple Technical Proposals.

As prescribed in 14.201-6(s), insert the following provision:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

(R 7-2003.36 1974 APR)

(R 1-2.502-1(a)(10))

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-25 Step Two of Two-Step Sealed Bidding.

As prescribed in 14.201-6(t), insert the following provision:

STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under subpart 14.5 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under ——— [*the Contracting Officer shall insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-26 Audit—Sealed Bidding.

As prescribed in 14.201-7(a), insert the following clause:

AUDIT—SEALED BIDDING (APR 1985)

(a) *Cost or pricing data.* If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (APR 1988)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $100,000 except that this clause does not apply to any modification for which the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 10830, Apr. 1, 1988]

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (APR 1985)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed $100,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed $100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $100,000 when entered into.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201-7(d), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

[51 FR 2666, Jan. 17, 1986]

52.214-30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201-6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (DEC 1989)

The bidder certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated ----- (insert date of signature of submission), which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if *none*, so state):

☐ (b) Are enclosed.

(End of provision)

[54 FR 48992, Nov. 28, 1989]

52.214-31 Facsimile Bids.

As prescribed in 14.201-6(w), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) Definition. *Facsimile bid*, as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

____

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

____

____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

[54 FR 48992, Nov. 28, 1989]

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

As prescribed in 14.201-6(c)(4), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (DEC 1989)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(e) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled *Facsimile Bids*. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)

[54 FR 48992, Nov. 28, 1989]

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

As prescribed in 14.201-6(v), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (DEC 1989)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent (i) by mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled *Facsimile Bids*.

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled *Facsimile Bids*. Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(End of provision)

[54 FR 48992, Nov. 28, 1989]

52.215-1 Examination of Records by Comptroller General.

As prescribed in 15.106-1(b), insert the following clause:

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds $10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. *Subcontract*, as used in this clause, excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

(End of clause)

(R 7-104.15 1975 JUN)

(R 1-7.103-3)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.215-2 Audit—Negotiation.

As prescribed in 15.106-2(b), insert the following clause:

AUDIT—NEGOTIATION (DEC 1989)

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost or pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all of the Contractor's books records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations an projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) Except as otherwise provided in FAR subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause.

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (APR 1984). In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

(R 7-104.41(b) 1978 AUG)

(R 7-702.48)

(R 7-703.41)

(R 7-704.33)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 10831, Apr. 1, 1988; 54 FR 48993, Nov. 28, 1989]

52.215-3 Solicitation for Information or Planning Purposes.

As prescribed in 15.405-2, insert the following provision on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes:

SOLICITATION FOR INFORMATION OR PLANNING PURPOSES (APR 1984)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205-18, Bid and proposal (B&P) costs, of the Federal Acquisition Regulation.

(b) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

(R 1-309)

52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), insert the following provision:

NOTICE OF POSSIBLE STANDARDIZATION (APR 1985)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be awarded without providing for full and open competition under section 6.302-1 of the Federal Acquisition Regulation.

(End of provision)

[50 FR 1747, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

52.215-5 Solicitation Definitions.

As prescribed in 15.407(c)(1), insert the following provision:

SOLICITATION DEFINITIONS (JUL 1987)

Government means United States Government.

Offer means *proposal* in negotiation.

Solicitation means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 9039, Mar. 20, 1987; 55 FR 38518, Sept. 18, 1990]

52.215-6 Type of Business Organization.

As prescribed in 15.407(c)(2), insert the following provision:

TYPE OF BUSINESS ORGANIZATION (JUL 1987)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as / / a corporation incorporated under the laws of the State of ———————, / / an individual, / / a partnership, / / a nonprofit organization, or / / a joint venture; or

(b) If the offeror or quoter is a foreign entity, it operates as / / an individual, / / a partnership, / / a nonprofit organization, / / a joint venture, or / / a corporation, registered for business in ——————— (country).

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 9039, Mar. 20, 1987]

52.215-7 Unnecessarily Elaborate Proposals or Quotations.

As prescribed in 15.407(c)(3), insert the following provision in requests for proposals and requests for quotations:

UNNECESSARILY ELABORATE PROPOSALS OR QUOTATIONS (APR 1984)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)

(AV 7-2003.40 1969 OCT)

52.215-8 Amendments to Solicitations.

As prescribed in 15.407(c)(4), insert the following provision:

AMENDMENTS TO SOLICITATIONS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by (1) signing and returning the amendment, (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer, (3) letter or telegram, or (4) facsimile, if facsimile offers are authorized in the solicitation. The Government must receive the acknowledgment by the time specified for receipt of offers.

(End of provision)

[53 FR 43394, Oct. 26, 1988, as amended at 54 FR 48993, Nov. 28, 1989]

52.215-9 Submission of Offers.

As prescribed in 15.407(c)(5), insert the following provision:

SUBMISSION OF OFFERS (DEC 1989)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

(d) Item samples, if required, must be submitted within the time specified for reciept of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government, and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

(End of provision)

[54 FR 48993, Nov. 28, 1989]

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

As prescribed in 15.407(c)(6), insert the following provision in requests for proposals:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (DEC 1989)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., and offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely

to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term *working days* excludes weekends and U.S. Federal holidays; or

(4) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for *best and final* offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the Contracting Officer's request for *best and final* offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. *Postmark* means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the *Express Mail Next day Service-Post Office to Addressee* label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. *Postmark* has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled *Facsimile Proposals*. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

[54 FR 48993, Nov. 28, 1989]

52.215-11 Authorized Negotiators.

As prescribed in 15.407(c)(7), insert the following provision in all requests for proposals and requests for quotations:

AUTHORIZED NEGOTIATORS (APR 1984)

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: [*list names, titles, and telephone numbers of the authorized negotiators*].

(End of provision)

(R 3-501(b) Sec K (iv))

52.215-12 Restriction on Disclosure and Use of Data.

As prescribed in 15.407(c)(8), insert the following provision in requests for proposals and requests for quotations:

RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part— for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of—or in connection with— the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]"; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

(End of provision)

(R 3-501(b) Sec L (xxiv))

52.215-13 Preparation of Offers.

As prescribed in 15.407(d)(1), insert the following provision in requests for proposals other than those excluded by 15.401:

PREPARATION OF OFFERS (APR 1984)

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the *Amount* column of the Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

(R SF 33A, Para 2, 1978 JAN)

52.215-14 Explanation to Prospective Offerors.

As prescribed in 15.407(d)(2), insert the following provision in requests for proposals other than those excluded by 15.401:

EXPLANATION TO PROSPECTIVE OFFERORS (APR 1984)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

(End of provision)

(R SF 33A, Para 3, 1978 JAN)

52.215-15 Failure to Submit Offer.

As prescribed in 15.407(d)(3), insert the following provision in requests for proposals other than those excluded by 15.401:

FAILURE TO SUBMIT OFFER (APR 1984)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

(R SF 33A, Para 6, 1978 JAN)

52.215-16 Contract Award.

As prescribed in 15.407(d)(4), insert the following provision:

CONTRACT AWARD (JUL 1990)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. *Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.*

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25531, June 21, 1990]

52.215-17 Telegraphic Proposals.

As prescribed in 15.407(e)(1) insert the following provision:

TELEGRAPHIC PROPOSALS (JUL 1987)

(a) Offerors or quoters may submit telegraphic responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic responses shall refer to this solicitation and include the item or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitation.

(c) Telegraphic responses that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(d) Offerors must promptly sign and submit complete copies of the proposals in confirmation of their telegraphic responses.

(e) The term *telegraphic responses*, as used in the provision, includes mailgrams.

(End of provision)

Alternate I (NOV 1988). As prescribed in 15.407(e)(2), substitute the following for paragraph (d) of the basic provision:

(d) Written confirmation of telegraphic proposals is not required.

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 9039, Mar. 20, 1987; 53 FR 43394, Oct. 26, 1988]

§ 52.215-18 Facsimile Proposals.

As prescribed in 15.407(j), insert the following provision:

FACSIMILE PROPOSALS (DEC 1989)

(a) Definition. *Facsimile proposal,* as used in this solicitation, means a proposal, modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile proposals as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile proposals that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile proposals must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

____

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

____

____

(g) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(End of provision)

[54 FR 48994, Nov. 28, 1989, as amended at 55 FR 25531, June 21, 1990]

52.215-19 Period for Acceptance of Offer.

As prescribed in 15.407(f), insert the following provision:

PERIOD FOR ACCEPTANCE OF OFFER (APR 1984)

In compliance with the solicitation, the offeror agrees, if this offer is accepted within ——— calendar days (60 calendar days unless a different period is inserted by the offeror) from the date specified in the solicitation for receipt of offers, to furnish any or all items on which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

(R SF 33 1977 MAR)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986]

52.215-20 Place of Performance.

As prescribed in 15.407(g), insert the following provision:

PLACE OF PERFORMANCE (APR 1984)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks *intends* in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Quoter

(End of provision)

(R 3-501(b) Sec K (viii))

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986]

52.215-21 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.708, insert the following clause in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract:

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (APR 1984)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any *make* items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time, (1) notify the Contracting Officer of each proposed addition and (2) provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)

(R 7-204.20(a) 1967 APR)

(R 1-3.902-3)

Alternate I (APR 1984). If a less economical *make* or *buy* categorization is selected for one or more items of significant value when a fixed-price incentive contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of *make* or *buy* for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

(R 7-204.20(b) 1967 APR)

Alternate II (APR 1984). If a less economical *make* or *buy* categorization is selected for one or more items of significant value when a cost-plus-incentive-fee contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of *make* or *buy* for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause.

(R 7-204.20(b) 1967 APR)

52.215–22 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.804-8(a), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (APR 1988)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 10831, Apr. 1, 1988]

52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (APR 1988)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed $100,000, except that this clause does not apply to any modification for which the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost of pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 10831, Apr. 1, 1988]

52.215-24 Subcontractor Cost or Pricing Data.

As prescribed in 15.804-8(c), insert the following clause in solicitations and contracts when the clause:

SUBCONTRACTOR COST OR PRICING DATA (APR 1985)

(a) Before awarding any subcontract expected to exceed $100,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed $100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds $100,000 when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.215-25 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(d), insert the following clause in solicitations and contracts when the clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (APR 1985)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed $100,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $100,000 when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed $100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $100,000 when entered into.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.215-26 Integrity of Unit Prices.

As prescribed in 15.812-2, insert the following clause:

INTEGRITY OF UNIT PRICES (APR 1987)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base costs (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this clause does not apply to any Department of Defense (DoD) or National Aeronautics and Space Administration (NASA) contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture, or to which it will not contribute significant value, when requested by the Contracting Officer. However, for DoD and NASA contracts, the information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

(d) The Contractor shall insert the substance of this clause, less paragraph (c), in all subcontracts.

(End of clause)

Alternate I (APR 1987). As prescribed in 15.812-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value. For DoD and NASA contracts, this information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

[52 FR 21902, June 9, 1987; 53 FR 27462, July 20, 1988]

52.215-27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804-8(e), insert the following clause:

TERMINATION OF DEFINED BENEFIT PENSION PLANS (SEP 1989)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(e).

(End of clause)

[54 FR 34757, Aug. 21, 1989]

52.215-28—52.215-29 [Reserved]

52.215-30 Facilities Capital Cost of Money.

As prescribed in 15.904(a), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

[52 FR 35669, Sept. 22, 1987]

52.215-31 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.904(b), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (SEP 1987)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

[52 FR 35669, Sept. 22, 1987]

52.215-32 Certification of Commercial Pricing for Parts or Components.

As prescribed in 15.813-7(a), insert the following clause:

CERTIFICATION OF COMMERCIAL PRICING FOR PARTS OR COMPONENTS (JUL 1990)

(a) *Definitions.*

Lowest commercial price, as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(1) Any agency of the United States;

(2) Customers located outside the United States;

(3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity; and

(4) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(i) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813-6(c)); or

(ii) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

Part or component, as used in this section, means—

(1) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(2) For acquisitions of civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) *Submission requirements.* The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813-4 when requested by the Contracting Officer:

CERTIFICATE OF COMMERCIAL PRICING FOR PARTS OR COMPONENTS

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, *provided* that in no event shall this period be less than 1-month in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached (list as necessary):

Part or Component	Price Difference

Offer/Proposal No. ____________
Time period for sales data ____________
Firm ____________
Typed name and signature ____________
Title ____________
Date ____________

(End of certificate)

(c) *Audit.* The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed.

Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) *Price reduction.* If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (JUL 1990). As prescribed in 15.813-7(a)(2), insert the following paragraph in the clause without a paragraph identifier, before paragraph (a) of this clause:

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

[55 FR 25531, June 21, 1990]

52.215-33 Order of Precedence.

As prescribed in 15.406-3(b), insert the following clause:

ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

[51 FR 2666, Jan. 17, 1986]

52.215-34 Evaluation of Offers for Multiple Awards.

As prescribed in 15.407(h), insert the following provision:

EVALUATION OF OFFERS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

[51 FR 19717, May 30, 1986, as amended at 55 FR 3887, Feb. 5, 1990]

52.215-35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (DEC 1989)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated ____________ (insert date of signature on submission) which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if *none,* so state):

☐ (b) Are enclosed.

(End of provision)

[54 FR 48994, Nov. 28, 1989]

52.215-36 Late Submissions, Modifications and Withdrawals of Proposals (Overseas).

As prescribed in 15.407(c)(9), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (DEC 1989)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for *best and final* offer, is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the Contracting Officer's request for *best and final offer* received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile at any time before award, subject to the conditions specified in the provision entitled *Facsimile Proposals.* Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

[54 FR 48994, Nov. 28, 1989]

52.215-37 Commercial Pricing Certificate—Notice.

As prescribed in 15.813-7(b), insert the following provision:

COMMERCIAL PRICING
CERTIFICATE—NOTICE (JUL 1990)

Line items ______ of this solicitation are parts or components to be acquired under conditions that require the submission of a commercial pricing certificate. The Offeror shall comply with the clause at FAR 52.215-32, Certification of Commercial Pricing for Parts or Components, and execute and submit a certificate with its offer.

(End of provision)

[55 FR 25532, June 21, 1990]

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see part 13) or (b) information or planning purposes 15.405).

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a ______________ [*Contracting Officer insert specific type of contract*] contract resulting from this solicitation.

(End of provision)

(R 3-501(b) Sec L (iv))

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(a)(1)(i) through (iii) apply (but see 16.203-4(a)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—
STANDARD SUPPLIES (APR 1984)

(a) The Contractor warrants that the unit price stated in the Schedule for ______________ [*offeror insert Schedule line item number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantites of the same item. The term *unit price* excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term *established price* means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) on the final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)

(AV 7-106.3 1978 AUG)

52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(b)(1)(i) through (iii) apply (but see 16.203-4(b)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (APR 1984)

(a) The Contractor warrants that the supplies identified as line items ———— [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term *established price* means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) in the final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)

(AV 7-106.4 1978 AUG)

52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203-4(c)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (APR 1984)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rates of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) below. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and with-

out its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) above.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contractor shall include with the final invoice a certification that the Contractor either (1) has not experienced a decrease in rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule or (2) has given notice of all such decreases in compliance with paragraph (a) above.

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

(AV 7-107 1974 MAR)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply:

PRICE REDETERMINATION—PROSPECTIVE (APR 1984)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) below) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition. Costs,* as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to ———, [see Note (1)] and the second and each succeeding period shall extend for ——— [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than ——— nor less than ——— [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree);

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the ——— month [see Note (3)] before the submission of proposed prices, on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above, within the time specified, the Con-

tracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) above), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (1) above need not be submitted for any quarter for which either no costs are to be reported under subdivision (1) (ii) above, or revised billing prices have been established in accordance with paragraph (g) above, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly state-

ment was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (h) above, and of this paragraph (i), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (h)(3) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (h) above, and this paragraph (i), modified as required by subparagraph (1) above.

(j) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination*. If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

(AV 7-109.2(b) 1980 FEB)

NOTES:

(1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert *first*, except that *second* may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.206-2 and 16.206-3(a) through (d) apply:

PRICE REDETERMINATION—RETROACTIVE (APR 1984)

(a) *General*. The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed ——— [*insert dollar amount of ceiling price*].

(b) *Definition*. *Costs*, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission*. (1) Within ——— [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet, or in any other form on which the parties agree, of all costs incurred in performing this contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination*. Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g) above, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) above, and of this paragraph (h) modified as required by subparagraph (1) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

(AV 7-109.3(b) 1980 FEB)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT
(APR 1984)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided,* that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to

which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of subpart 42.7 of the FAR may be used.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided,* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(b) 1979 MAR)

(R 7-203.4(c)(4)(iv))

(R 7-402.3(a) and (c)(5)(iii)

(R 7-605.5)

(R 7-1909.4)

(R 1-7.202-4)

(R 1-7.203-9)

(R 1-3.704-1 and -2)

(R 1-7.402-3(a) and (b)(1) and (3))

(R 1-7.403-9)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 4, 1985]

52.216–8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

FIXED FEE (APR 1984)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; *provided*, that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(c)(9))

(R 7-402.3(a) and (c)(7))

(R 7-1909.4)

(R 1-7.202-4)

(R 1-7.402-3(a) and (b)(5))

52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated:

FIXED FEE—CONSTRUCTION (APR 1984)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) below.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-605.5)

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

INCENTIVE FEE (APR 1984)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) *Target cost*, as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) *Target fee*, as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or $100,000, whichever is less.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by ——— [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by ——— [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than ——— [*Contracting Officer insert percentage*] percent or less than ——— [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, *total allowable cost* shall not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance—Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in *total allowable cost* for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)

(R 7-203.4(b) 1979 MAR)

(R 7-203.4(c)(6) and (9))

52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract. This clause may be modified by substituting *$10,000* in lieu of *$100,000* as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(c)(4) and (9))

(R 7-402.3(c)(5)(ii), (iii), and (7))

(R 7-1909.4)

(R 1-7.402-3(b))

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the contracting officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

(R 7-203.4(a) 1978 SEP)

(R 7-402.3(c)(8))

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated. This clause may be modified by substituting *$10,000* in lieu of *$100,000* as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST-SHARING CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(c)(4) and (9))

(R 7-402.3(c)(5), (6) and (7))

(R 1-7.402-3(b))

Alternate I (APR 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

(R 7-402.3(c)(8))

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause in solicitations and contracts when a consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES (APR 1984)

(a) *General.* (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursable under it.

(b) *Invoicing.* The Government shall make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.

(c) *Negotiated indirect costs.* Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) below, allowable indirect costs under this contract shall be obtained by applying final indirect cost rates established as follows:

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost and data specifying the contract and/or subcontract to which the rates apply. The proposed rates

shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contractor's proposal. The Contractor shall submit an executed Certificate of Current Cost or Pricing Data (in the form prescribed by subsection 15.804-4 of the FAR) applicable to the data furnished in connection with the final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of subpart 42.7 of the FAR may be used.

(f) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) *Assignments and releases.* The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee shall execute and deliver—

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of performance of this contract; *provided* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(iii) Claims for reimbursement of costs, including related expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

(R 7-702.10 1978 AUG)

Alternate I (APR 1984). If the contract is for facilities acquisition, and the Contracting Officer considers it appropriate, add the following paragraphs (g) and (h) to the basic clause, and redesignate paragraph (g) of the basic clause as paragraph (i):

(g) *Withholding.* After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold payment of allowable costs until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(h) *Final Payment.* The Contractor shall submit a completion invoice or voucher, designated as such, no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of the invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

(R 7-702.10 1978 AUG)

(R 7-703.9)

52.216–14 Allowable Cost and Payment—Facilities Use.

As prescribed in 16.307(h), insert the following clause in solicitations and contracts when a facilities use contract is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES USE (APR 1984)

(a) For the performance of any work, duty, or obligations specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursed under it.

(End of clause)

(R 7-704.3 1965 JUL)

52.216–15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words *subpart 31.3* and substituting for them *section 31.106*.

PREDETERMINED INDIRECT COST RATES (APR 1984)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b) Not later than 90 days after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant Contracting Officer under subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures, to the cognizant Government audit activity, proposed predetermined indirect cost rates and supporting cost data. The proposed rate shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin as soon as practical after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the fiscal year (unless the parties agree to a different period) for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

(R 7-403.9 1978 AUG)

52.216–16 Incentive Price Revision—Firm Target.

As prescribed in 16.405(a), insert the following clause in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the target cost, target profit, and target price for each item.

INCENTIVE PRICE REVISION—FIRM TARGET (APR 1984)

(a) *General.* The supplies or services identified in the Schedule as Items ——— [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; *provided*, that in no event shall the total final price of these items exceed the ceiling price of ——— dollars ($———). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition. Costs,* as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within ——— [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less ——— [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus ——— [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting billing prices.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially

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greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(2) above, when the amount stated under subdivision (ii), immediately above, differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g), above, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) above and of this paragraph (h), modified as required by subparagraph (1) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term *contract price* includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

(R 7-108.1 1980 FEB)

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

(R 7-108.1 1980 FEB)

52.216–17 Incentive Price Revision—Successive Targets.

As prescribed in 16.405(b), insert the following clause in solicitations and contracts when a fixed-price incentive (successive target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the initial target cost, initial target profit, and initial target price for each item.

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (APR 1984)

(a) *General.* The supplies or services identified in the Schedule as Items ——— [*Contracting Officer insert line item numbers*] are subject to price revision in accordance with this clause; *provided*, that in no event shall the total final price of these items exceed the ceiling price of ——— dollars ($———). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of ——— [*Contracting Officer insert percent*] percent of the initial target cost. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) *Definition. Costs,* as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within ——— [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has completed —— [see Note 1], the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on Standard Form 1411 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance on Standard Form 1411 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by ——— percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided,* that in no event shall the total firm target profit be less than —— percent or more than —— percent [*Contracting Officer insert percents*] of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less —— percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus —— percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) above within ——— [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) above, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) above, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) above.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) above. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(4) above when the amount stated under subdivision (ii), immediately above, differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then

that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (i) above, and of this paragraph (j), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (i)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (i) above, and of this paragraph (j), modified as required by subparagraph (j)(1), immediately above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term *contract price* includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

(R 7-108.2 1980 FEB)

NOTES:

(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

(R 7-108.2 1980 FEB)

52.216-18 **Ordering.**

As prescribed in 16.505(a), insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:

ORDERING (APR 1984)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule. Such orders may be issued from ——— through ——— [*insert dates*].

(b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.

(c) If mailed, a delivery order is considered *issued* when the Government deposits the order in the mail. Orders may be issued orally or by written telecommunications only if authorized in the Schedule.

(End of clause)

(R 7-1101 1968 JUN)

52.216-19 **Delivery-Order Limitations.**

As prescribed in 16.505(b), insert a clause substantially the same as follows in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:

DELIVERY-ORDER LIMITATIONS (APR 1984)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than ——— [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of ——— [*insert dollar figure or quantity*];

(2) Any order for a combination of items in excess of ——— [*insert dollar figure or quantity*]; or

(3) A series of orders from the same ordering office within ——— days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within ——— days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

(R 7-1102.1(a) 1965 AUG)

(R 7-1102.2(a))

(R 7-1102.3(a))

52.216-20 **Definite Quantity.**

As prescribed in 16.505(c), insert the following clause in solicitations and contracts when a definite-quantity contract is contemplated.

DEFINITE QUANTITY (APR 1984)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ——— [*insert date*].

(End of clause)

(R 7-1102.1(b) 1965 AUG)

52.216-21 Requirements.

As prescribed in 16.505(d), insert the following clause in solicitations and contracts when a requirements contract is contemplated:

REQUIREMENTS (APR 1984)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as *estimated* or *maximum* in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Delivery-Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ——— [insert date].

(End of clause)

(R 7-1102.2(b) 1966 OCT)

Alternate I (APR 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may itself furnish within its own capabilities.

(R 7-1102.2(b)(1) 1966 OCT)

Alternate II (APR 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

(R 7-1102.2(b)(2) 1966 OCT)

Alternate III (APR 1984). If the requirements contract involves a partial small business or labor surplus area set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(R 7-1102.2(b)(4) 1966 OCT)

Alternate IV (APR 1984). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business or labor surplus area set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

(R 7-1102.2(b) 1966 OCT)

52.216-22 Indefinite Quantity.

As prescribed in 16.505(e), insert the following clause in solicitations and contracts when an indefinite-quantity contract is contemplated:

INDEFINITE QUANTITY (APR 1984)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the *maximum*. The Government shall order at least the quantity of supplies or services designated in the Schedule as the *minimum*.

(c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ——— [*insert date*].

(End of clause)

(R 7-1102.3(b) 1965 AUG)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than ——— [*insert date*]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

(R 7-802.2 1964 MAR)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding ——— dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ——— dollars.

(End of clause)

(R 7-802.3 1967 OCT)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause in solicitations and contracts when a letter contract is contemplated. If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804-3 for not requiring submission of cost or pricing data, the words *and cost or pricing data* may be deleted from paragraph (a) of the clause.

CONTRACT DEFINITIZATION (APR 1984)

(a) A ——— [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ——— [*insert specific type of proposal (e.g., fixed-price or cost-and-fee)*] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*]:

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(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) above, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

(R 7-802.5(a) 1969 DEC)

Alternate I (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated ——— [*insert price ceiling or firm fixed price*] in no event to exceed ——— [*insert the proposed price upon which the award was based*].

(R 7-802.5(b) 1969 DEC)

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (APR 1984)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government shall promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term *costs* includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though it has not yet paid for such items or services.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be (1) reduced by any amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

(R 7-802.4(a) 1972 MAY)

52.217-1 Limitation of Price and Contractor Obligations.

As prescribed in 17.105(a)(1), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (APR 1984)

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

(c) The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the *Termination for Convenience of the Government* clause, *total contract price* in that clause means the amount available for performance of this contract, as in paragraph (a) above, plus the amount established as the cancellation ceiling. *Work under the contract* in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an *Option* or *Changes* clause) shall not constitute the notification contemplated by paragraph (a) of this clause.

(End of clause)

52.217-2 Cancellation of Items.

As prescribed in 17.105(a)(2), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

CANCELLATION OF ITEMS (APR 1984)

(a) *Cancellation*, as used in this clause, means that the Government is canceling its requirements for all items in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur, by the date or within the time period specified in the Schedule, (unless a later date is agreed to) if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the *Default* clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the *Termination for Convenience of the Government* clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the prime contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized in the unit prices for the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the *Termination for Convenience of the Government* clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see FAR 15.8) which are applicable to and normally would have been amortized in all items to be furnished under the multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized by the unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. *Useful commercial life* means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an *Option* clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in the price for option quantities any costs of a startup or nonrecurring nature, that have been fully provided for in the unit prices of the firm quantities of the program years. The Contractor further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the *Option* clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

Alternate I (APR 1984). If a multiyear modified requirements contract is awarded for more than 1 program year, substitute the following paragraph (a) for paragraph (a) of the basic clause, delete paragraph (b) of the basic clause, and redesignate the remaining paragraphs accordingly:

(a) As used herein, the term *cancellation* means that the Government is cancelling, pursuant to this clause, its anticipated requirements for items as set forth in the schedule for all program years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur if, by the date of within the time period specified in the schedule or such further time as may be agreed to, the Contracting Officer (1) notifies the Contractor that funds will not be available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds will be available for performance of a requirement for the succeeding program year. *Cancellation* shall also be deemed to have occurred if, upon expiration of the final program year, the Government has failed to order the specified items in quantities up to the aggregate Best Estimated Quantity set forth in the Schedule. Following cancellation under this clause of any program year(s), the Government shall not be obligated to issue nor the Contractor to accept any further orders under this contract.

(R 1-322.8)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in 17.208(b) or (c):

EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; i.e., options will not be included in the evaluation for award purposes.

(End of provision)

(R 1-1504(a))

52.217-4 Evaluation of Option Exercised at Time of Contract Award.

As prescribed in 17.208(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

[53 FR 17860, May 18, 1988]

52.217-5 Evaluation of Options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

[53 FR 17860, May 18, 1988, as amended at 55 FR 25532, June 21, 1990]

52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within ..... [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

[54 FR 5058, Jan. 31, 1989]

52.217-7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY-SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

[54 FR 5058, Jan. 31, 1989]

52.217-8 Option to Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (AUG 1989)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extention of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

[54 FR 29283, July 11, 1989]

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within * * * [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]; *provided*, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed . . . . . (months) (years).

(End of clause)

[54 FR 5058, Jan. 31, 1989]

52.218 [Reserved]

52.219-1 Small business concern representation.

As prescribed in 19.304(a), insert the following provision:

SMALL BUSINESS CONCERN REPRESENTATION (FEB 1990)

(a) *Representation.* The offeror represents and certifies as part of its offer that it ---- is, ---- is not a small business concern and that ----, all, ---- not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(b) *Definition.*

Small business concern, as used in this provision, means a concern, including its affilitates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

(c) *Notice.* Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in paragraph (a) of this clause in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies;

and (3) be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

[55 FR 3887, Feb. 5, 1990]

52.219-2 Small disadvantaged business concern representation.

As prescribed in 19.304(b), insert the following provision:

SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (FEB 1990)

(a) *Representation.* The offeror represents that it —— is, —— is not a small disadvantaged business concern.

(b) *Definitions.*

Asian Pacific Americans, as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

Indian tribe, as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

Native Americans, as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

Native Hawaiian Organization, as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Small business concern, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business concern, as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian Organizations.

(End of provision)

[55 FR 3888, Feb. 5, 1990]

52.219-3 Women-Owned Small Business Representation.

As prescribed in 19.304(c), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:

WOMEN-OWNED SMALL BUSINESS REPRESENTATION (APR 1984)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

(b) *Definitions.*

Small business concern, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

Women-owned, as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(End of provision)

(R FPR Temp. Reg 48 1978 DEC)

52.219-4 Notice of Small Business-Small Purchase Set-Aside.

As prescribed in 19.508(a), insert the following provision:

NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (AUG 1988)

Quotations under this acquisition are solicited from small business concerns only. If this purchase is for supplies, it will be made only from a small business concern furnishing its own manufactured product, or from a small business concern providing the product of another manufacturer. In either case, such product must be manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. Quotations that are not from a small business shall not be considered and shall be rejected.

(End of provision)

[53 FR 27468, July 20, 1988, as amended at 53 FR 36028, Sept. 16, 1988]

52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.

As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause in solicitations and contracts involving total small business-labor surplus area set-asides:

NOTICE OF TOTAL SMALL BUSINESS-LABOR SURPLUS AREA SET-ASIDE (APR 1984)

(a) *Definitions.*

Labor surplus area, as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

Perform substantially in labor surplus areas, as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:

(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(ii) If the contract exceeds $10,000, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.

(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (*1*) the prime Contractor and (*2*) first-tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(R 1-1.706-5(d))

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:

(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 25069, June 12, 1989]

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in 19.508(c), insert the following clause in solicitations and contracts involving total small business set-asides:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (APR 1984)

(a) *Definition.*

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(R 7-2003.2 1972 JUL)

(R 1-1.706-5(e))

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 25069, June 12, 1989]

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in 19.508(d), insert the following clause in solicitations and contracts involving partial small business set-asides:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (APR 1984)

(a) *Definitions.*

Labor surplus area, as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

Perform substantially in labor surplus areas, as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) (i) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted re-

sponsive offers on the non-set-aside portion. These concerns fall into two groups:

(A) Group 1 — Small business concerns that are also labor surplus area concerns.

(B) Group 2 — Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(2) The offeror agrees that, if awarded a contract that exceeds $10,000, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract.

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(R 7-2003.3(a) 1978 JUN)

(R 1-1.706-6(c))

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:

(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 25069, June 12, 1989]

52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

As prescribed in 19.708(a), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term *small business concern* shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term *small business concern owned and controlled by socially and economically disadvantaged individuals* shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 27563, July 3, 1985; 51 FR 27116, July 29, 1986; 55 FR 3888, Feb. 5, 1990]

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.

As prescribed in 19.708(b), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (FEB 1990)

(a) This clause does not apply to small business concerns.

(b) *Commercial product*, as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns; and

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administra-

tion, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled *Utilization of Small Business Concerns and Small Disadvantaged Business Concerns* in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the programs's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all *make-or-buy* decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(4) Provide notice to subcontractors, similar to that in the solicitation provision at 52.219-1, concerning penalties for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; *provided*, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled *Utilization of Small Business Concerns and Small Disadvantaged Business Concerns,* or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (AUG 1989). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 19805, May 27, 1987; 54 FR 29283, July 11, 1989; 54 FR 49296, Nov. 30, 1989; 55 FR 3888, Feb. 5, 1990]

52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

As prescribed in 19.708(c)(1), the contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially as follows when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the condition in 19.708(c)(3) is applicable. The contracting officer may vary the terms of the clause as specified in 19.708(c)(2).

INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1984)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns and a certain percentage to small disadvantaged business concerns.

(b) If the Contractor exceeds its subcontracting goals in performing this contract, it will receive ——— [*insert the appropriate number between 0 and 10*] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in subpart 15.9 of the Federal Acquisition Regulation.

(End of clause)

(R 7-104.14(d) 1979 JUL)

(R FPR Temp. Reg. 50 1979 JUN)

52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

SPECIAL 8(a) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegates to the ——— [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; *provided, however*, that the ——— [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the ——— [*insert name of contracting agency*].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the *Disputes* clause of said subcontract.

(f) To notify the [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

Alternate I (FEB 1990). In accordance with the prescription in 19.811-3(a), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) That payments to be made under the contract will be deposited directly by the [*insert name of contracting activity*] to a special bank account established by the subcontractor and that all disbursements will require approval and counter signature by the SBA or a third party approved by SBA.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 46009, Oct. 31, 1989; 55 FR 3888, Feb. 5, 1990]

52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No. ——— [*insert number of contract*] with the ——— [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The ——— [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. ——— [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the ——— [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this contract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the ——— [*insert name of contracting agency*].

(4) That is will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the ——— [*insert name of contracting agency*].

(End of clause)

Alternate I (FEB 1990). In accordance with the prescription in 19.811-3(b), delete paragraph (c) of the basic clause and add the following to paragraph (b):

(5) That, in accordance with section 301(b) of Pub. L. 100-656, it will establish a special

account, at a bank insured by the Federal Deposit Insurance Corporation, under which (i) all payments under this subcontract will be deposited directly by the [*insert name of contracting activity*] and (ii) all disbursements will be subject to approval and counter signature by the SBA or a third party approved by SBA.

(6) That it will make timely payment to all suppliers of material or labor.

(7) That it will notify all suppliers of material or labor and will obtain written acknowledgment from such suppliers, that the contract is exempt from the Miller Act's bonding requirement and that neither the SBA nor the [*insert name of contracting activity*] are liable for payment to suppliers for materials or labor. Such acknowledgments must be provided to the SBA prior to SBA approval of disbursements to the contractor from the special bank account.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989; 54 FR 46009, Oct. 31, 1989; 55 FR 3889, Feb. 5, 1990; 55 FR 38518, Sept. 18, 1990]

52.219-13 Utilization of Women-Owned Small Businesses.

As prescribed in 19.902, insert the following clause in solicitations and contracts:

UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (AUG 1986)

(a) *Women-owned businesses*, as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

Control, as used in this clause, means exercising the power to make policy decisions.

Operate, as used in this clause, means being actively involved in the day-to-day management of the business.

Small business concern, as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 31427, Sept. 3, 1986]

52.219-14 Limitations on Subcontracting.

As prescribed in 19. 508(e), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (OCTOBER 1987)

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(a) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(b) *Supplies (other than procurement from a regular dealer in such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(c) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(d) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

[52 FR 38190, Oct. 14, 1988]

52.219-15 Notice of participation by organizations for the handicapped.

As prescribed in 19.508(f), insert the following clause:

NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR THE HANDICAPPED (JUNE 1989)

(a) *Definitions*.

Handicapped individual means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(b) The Offeror certifies that it is [ ] is not [ ] a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

(c) An Offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

Public or private organization for the handicapped means one which (1) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

(End of clause)

[54 FR 25069, June 12, 1989]

52.219-16 Liquidated damages-small business subcontracting plan.

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES-SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)

(a) *Failure to make a good faith effort to comply with the subcontracting plan,* as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled *Small Business and Small Disadvantaged Business Subcontracting Plan,* or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small and Small Disadvantaged Business Subcontracting Plans, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small Business and Small Disadvantaged Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Oficer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may leave.

(End of clause)

[54 FR 30710, July 21, 1989]

52.219-17 Section 8(a) Award.

As prescribed in 19.811-3(c), insert the following clause:

SECTION 8(a) AWARD (FEB 1990)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements and advance payments, delegates to the ——— (*insert name of contracting activity*) the responsibility for administering the contract

with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided, however* that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(End of clause)

[54 FR 46009, Oct. 31, 1989, as amended at 55 FR 3889, Feb. 5, 1990]

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (FEB 1990)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code ________*________ is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands. However, this requirement does not apply in connection with construction or service contracts.

(2) The [*insert name of SBA's contractor*] will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

(*Insert SIC code assigned to the acquisition by the contracting activity.)

Alternate I (NOV 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(4) to paragraph (a) of the clause:

(4) The offeror's approved business plan is on the file and serviced by ________* ________ (**Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*).

Alternate II (NOV 1989). If the competition is to be limited to 8(a) concerns within a particular program participation stage, add the following subparagraph (a)(4) to paragraph (a) of the clause. When used in conjunction with Alternate I, this subparagraph should be renumbered (a)(5).

(4) The offeror is in the ________*________ stage of 8(a) Program participation. (**Contracting Officer completes by inserting the appropriate stage of participation as identified by SBA (i.e., developmental or transitional).*)

Alternate III (NOV 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b), substitute the following paragraph (d)(1) for paragraph (d)(1) of the basic clause:

(d)(1) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

[54 FR 46009, Oct. 31, 1989; 54 FR 48105, Nov. 21, 1989, as amended at 55 FR 3889, Feb. 5, 1990; 55 FR 25532, June 21, 1990; 55 FR 38518, Sept. 18, 1990]

52.220-1 Preference for Labor Surplus Area Concerns.

As prescribed in 20.103(b), insert the following clause in solicitations and contracts that (a) exceed the appropriate small purchase limitation in part 13 and (b) are not set aside for labor surplus area concerns:

PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) This acquisition is not a set aside for labor surplus area (LSA) concerns. However, the offeror's status as such a concern may affect (1) entitlement to award in case of tie offers or (2) offer evaluation in accordance with the Buy American Act clause of this solicitation. In order to determine whether the offeror is entitled to a preference under (1) or (2) above, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50 percent of the contract price.

____

____

(b) Failure to identify the locations as specified above will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as an LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of clause)

(R 7-2003.13 1978 JUN)

52.220-2 Notice of Total Labor Surplus Area Set-Aside.

As prescribed in 20.202, insert the following clause in solicitations and contracts estimated to exceed the appropriate small purchase limitation in part 13 that are totally set aside for labor surplus area concerns:

NOTICE OF TOTAL LABOR SURPLUS AREA SET-ASIDE (APR 1984)

(a) *General.* Offers are solicited from concerns that will agree to perform as labor surplus area (LSA) concerns. This action is based on the Small Business Act (15 U.S.C. 644(d), (e), and (f)) and Defense Manpower Policy No. 4B (44 CFR 331). Offers received from concerns that do not agree to perform as LSA concerns will be considered nonresponsive.

(b) *Definitions. Labor surplus area,* as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(c) *Agreement.* The offeror agrees that, if awarded a contract as an LSA concern, the offeror will—

(1) Perform the contract, or cause it to be performed, substantially in areas classified as LSA's at the time of award or at the time of performance; and

(2) Submit to the Contracting Officer within 30 days after the award of the contract (if it exceeds the appropriate small purchase limitation in part 13 of the Federal Acquisition Regulation) or such longer time as prescribed by the Contracting Officer, a report containing the following information:

REPORT ON PERFORMANCE IN LABOR SURPLUS AREAS

(a) Amount of the contract .... $..........

(b) Costs incurred or to be incurred by the prime Contractor under the contract on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:

	Labor surplus area	*Cost*
(1)	....	$..........
(2)	....	$..........
(3)	....	$..........
(4)	....	$..........

(c) Costs incurred or to be incurred by first-tier subcontractors on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:

	Labor surplus area	*Cost*
(1)	....	$..................
(2)	....	$..................
(3)	....	$..................
(4)	....	$..................
(d)	Total of (b) and (c):	$..................

(End of clause)

(R 1-1.804-1(c))

52.220-3 Utilization of Labor Surplus Area Concerns.

As prescribed in 20.302(a), insert the following clause in solicitations and contracts when it is estimated that the contract will exceed the appropriate small purchase limitation in part 13. See 20.302(a)(1) through (2) for exceptions:

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) *Applicability.* This clause is applicable if this contract exceeds the appropriate small purchase limitation in part 13 of the Federal Acquisition Regulation.

(b) *Policy.* It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) *Order of preference.* In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) *Definitions. Labor surplus area,* as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(End of clause)

(R 1-1.805-3(a))

(R 7-104.20(a) 1981 May)

52.220-4 Labor Surplus Area Subcontracting Program.

As prescribed in 20.302(b), insert the following clause in solicitations and contracts that (a) may exceed $500,000, (b) contain the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, and (c) in the opinion of the contracting officer, offer substantial subcontracting possibilities. In addition, the contracting officer shall urge contractors, that will receive negotiated contracts that may not exceed $500,000 but that meet the criteria in (b) and (c) above, to accept this clause:

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR 1934)

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review

by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed $500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractors.

(End of clause)

(R1-1.805-3(b))

(R 7-104.20(b) 1978 JUN)

52.221 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103-5(a), insert the following clause in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e):

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

(End of clause)

(R 7-203.27 1967 JUN)

(AV 7-104.4 1958 SEP)

(AV 7-603.1 1958 SEP)

52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103-5(b), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed *—— or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25532, June 21, 1990; 55 FR 38518, Sept. 18, 1990]

52.222-3 Convict Labor.

As prescribed in 22.202, insert the following clause in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of

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*Insert either "zero" or the dollar amount agreed to during negotiations.

Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—

(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

CONVICT LABOR (APR 1984)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

(End of clause)

(R 7-104.17 1975 OCT)

(R 7-607.12 1975 OCT)

(R 1-12.204)

52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 22.305, insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAR 1986)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.* (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

[51 FR 12293, Apr. 9, 1986]

52.222-5 [Reserved]

52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

DAVIS-BACON ACT (FEB 1988)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled *Apprentices and Trainees.* Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *provided,* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under

this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

[53 FR 4945, Feb. 18, 1988]

52.222-7 Withholding of Funds.

As prescribed in 22.407(a), insert the following clause:

WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

[53 FR 4945, Feb. 18, 1988]

52.222-8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a *Statement of Compliance*, signed by the Contractor or subcontractor or his or her agent who pays or supervises

the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the *Statement of Compliance* required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

[53 FR 4945, Feb. 18, 1988]

52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

APPRENTICES AND TRAINEES (FEB 1988)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR part 30.

(End of clause)

[53 FR 4946, Feb. 18, 1988]

52.222-10 Compliance With Copeland Act Requirements.

As prescribed in 22.407(a), insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR part 3, which are hereby incorporated by reference in this contract.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-11 Subcontracts (Labor Standards).

As prescribed in 22.407(a), insert the following clause:

SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility,* and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-12 Contract Termination—Debarment.

As prescribed in 22.407(a), insert the following clause:

CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance With Davis-Bacon and Related Act Regulations,* or *Certification of Eligibility* may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-13 Compliance with Davis-Bacon and Related Act Regulations.

As prescribed in 22.407(a), insert the following clause:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and, 5 are hereby incorporated by reference in this contract.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-14 Disputes Concerning Labor Standards.

As prescribed in 22.407(a), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-15 Certification of Eligibility.

As prescribed in 22.407(a), insert the following clause:

CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-16 Approval of Wage Rates.

As prescribed in 22.407(b), insert the following clause:

APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-17 Labor Standards for Construction Work—Facilities Contracts.

As prescribed in 22.407(d), insert the following clause:

LABOR STANDARDS FOR CONSTRUCTION WORK—FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

(1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.

(2) Davis-Bacon Act at 52.222-6.

(3) Withholding of Funds at 52.222-7.

(4) Payrolls and Basic Records at 52.222-8.

(5) Apprentices and Trainees at 52.222-9.

(6) Compliance With Copeland Act Requirements at 52.222-10.

(7) Subcontracts (Labor Standards) at 52.222-11.

(8) Contract Termination—Debarment at 52.222-12.

(9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.

(10) Disputes Concerning Labor Standards at 52.222-14.

(11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

[53 FR 4947, Feb. 18, 1988]

52.222-18 [Reserved]

52.222-19 Walsh-Healey Public Contracts Act Representation.

As prescribed in 22.610(a), insert the following provision in solicitations that will result in contracts covered by the Act. If the solicitation is a Request for Quotation, the terms *quoter* and *quote* may be substituted for *offeror* and *offer.*

WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATION (APR 1984)

The offeror represents as a part of this offer that the offeror is ☐ or is not ☐ a regular dealer in, or is ☐ or is not ☐ a manufacturer of, the supplies offered.

(End of provision)

(41 CFR 50-201.1)

52.222-20 Walsh-Healey Public Contracts Act.

As prescribed in 22.610(b), insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)

(R 7-102.17 1958 JAN)

(R 1-12.605)

52.222-21 Certification of Nonsegregated Facilities.

As prescribed in 22.810(a)(1), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the contract amount is expected to exceed $10,000:

CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

(a) *Segregated facilities*, as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will—

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

(R 7-2003.14(b)(1)(A) 1970 AUG)

(R 1-12.803-10(d))

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)

The offeror represents that—

(a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

(R 7-2003.14(b)(1)(B) 1973 APR)

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.

As prescribed in 22.810(b), insert the following provision in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be in excess of $10,000:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
————	————
[Contracting Officer shall insert goals]	*[Contracting Officer shall insert goals]*

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled *Affirmative Action Compliance Requirements for Construction,* and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

(2) Name, address, and telephone number of the subcontractor;

(1) Employer's identification number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the *covered area* is ——— *[Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the State, county, and city].*

(End of provision)

(R 7-2003.14(d) 1978 SEP)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.222-24 Preaward On-Site Equal Opportunity Compliance Review.

As prescribed in 22.810(c), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be for $1 million or more:

PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (APR 1984)

An award in the amount of $1 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of $1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(End of provision)

(R 7-2003.14(a) 1970 AUG)

(R 1-12.803-9)

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

(R 7-2003.14(b) 1979 SEP)

(R 1-12.805-4)

52.222-26 **Equal Opportunity.**

As prescribed in 22.810(e), insert the following clause in solicitations and contracts (see 22.802) unless all of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)):

EQUAL OPPORTUNITY (APR 1984)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

(R 7-103.18 1978 SEP)

(R 1-12.803-2)

(R 7-607.13 1978 SEP)

Alternate I (APR 1984). If one or more, but not all, of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)), the contracting officer shall add the following as a preamble to the clause:

Notice. The following terms of this clause are waived for this contract: ——— [*Contracting Officer shall list terms*].

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000:

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 1984)

(a) *Definitions.*

Covered area, as used in this clause, means the geographical area described in the solicitation for this contract.

Director, as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

Employer identification number, as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

Minority, as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to

seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

(R 7-603.60 1978 SEP)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.

As prescribed in 22.810(g), insert the following clause:

EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)

Notwithstanding the clause of this contract entitled *Subcontracts*, the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

(AV 7-104.22 1971 OCT)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 4, 1985; 51 FR 36972, Oct. 16, 1986]

52.222-29 Notification of Visa Denial.

As prescribed in 22.810(h), insert the following clause in contracts that will include the clause at 52.222-26, Equal Opportunity, if the Contractor is required to perform in or on behalf of a foreign country:

NOTIFICATION OF VISA DENIAL (APR 1984)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the Department of State, Washington, DC. Attention: Director, Bureau of Politico- Military Affairs, and the Director, Office of Federal Contract Compliance Programs, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

(AV 7-2003.14(c) 1978 SEP)

52.222-30—52.222-34 [Reserved]

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.

As prescribed in 22.1308, insert the following clause in solicitations and contracts when the contract is for $10,000 or more or is expected to amount to $10,000 or more (see 22.1308(a) for exceptions):

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(a) *Definitions.*

Appropriate office of the State employment service system, as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Openings that the Contractor proposes to fill from within its own organization, as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established *recall* lists.

Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement, as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

Suitable employment openings, as used in this clause—

(1) Includes, but is not limited to, openings that occur in jobs categorized as—

(i) Production and nonproduction;

(ii) Plant and office;

(iii) Laborers and mechanics;

(iv) Supervisory and nonsupervisory;

(v) Technical; and

(vi) Executive, administrative, and professional positions compensated on a salary basis of less than $25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Employment;
(ii) Upgrading;
(iii) Demotion or transfer;
(iv) Recruitment;
(v) Advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing openings.* (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) *Applicability.* (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) *Postings.* (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

(R 7-103.27 1976 JUL)

(R FPR Temp. Reg. 39)

Alternate I (APR 1984). As prescribed in 22.1308(b), if the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].

(R 12-1402(d))

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.222-36 Affirmative Action for Handicapped Workers.

As prescribed in 22.1408, insert the following clause in solicitations and contracts that exceed $2,500 or are expected to exceed $2,500. See 22.1408(a) for exceptions.

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) *General*. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as—

(i) Employment;
(ii) Upgrading;
(iii) Demotion or transfer;
(iv) Recruitment;
(v) Advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings*. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) *Noncompliance*. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts*. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

(R 7-103.28 1976 MAY)

(R FPR Temp. Reg. 38)

Alternate I (APR 1984). As prescribed in 22.1408(b), when the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].

(R 12.1302(d))

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workplace of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled *Federal Contractor Veterans' Employment Report VETS-100.*

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

[53 FR 663, Jan. 11, 1988; 53 FR 6219, Mar. 1, 1988]

52.222-38—52.222-39 [Reserved]

52.222-40 Service Contract Act of 1965, as Amended—Contracts of $2,500 or Less.

As prescribed in 22.1005, insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED—CONTRACTS OF $2,500 OR LESS (MAY 1989)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR part 4.

(End of clause)

[54 FR 19828, May 8, 1989]

52.222-41 Service Contract Act of 1965, as Amended.

As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) *Definitions. Act,* as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

Contractor, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term *Government Prime Contractor.*

Service employee, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in part 541 of title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of Compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of 29 CFR part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment

Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

[54 FR 19828, May 8, 1989]

52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in 22.1006(b), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It Is Not a Wage Determination

Employee class	Monetary wage—Fringe benefits

(End of clause)

[54 FR 19831, May 8, 1989]

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Contractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the Contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

[54 FR 19831, May 8, 1989]

52.222–44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

[54 FR 19831, May 8, 1989]

52.222–45 Notice of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees:

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (APR 1984)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this solicitation. Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653 (10 U.S.C. 2306(f)) and in accordance with Federal Acquisition Regulation 15.802(a).

(End of provision)

(AV 7-2003.78 1978 JUN)

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (APR 1984)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(End of provision)

(R 7-2003.79 1978 JUN)

52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).

As prescribed in 22.1006(d) and 22.1012-3(d)(1), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor ________ and the ________ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

[54 FR 19831, May 8, 1989]

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.

As prescribed in 22.1006(e)(1), insert the following clause:

EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS (MAY 1989)

(a) The following certification shall be checked:

Certification

The offeror certifies ( )/does not certify ( ) that: (i) The items of equipment to be serviced under this contract are commercial items which are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations; (ii) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical, and/or office and business equipment. An *established catalog price* is a price included in a catalog, price list schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An *established market price* is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor; and (iii) The Contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for equivalent employees servicing the same equipment of commercial customers.

(b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the Contractor shall notify the Contracting Officer as soon as possible.

(c) Failure to execute the certification in paragraph (a) of this clause or to contact the Contracting Officer as required in paragraph (b) of this clause may render the bid or offer nonresponsive.

(End of clause)

[54 FR 19832, May 8, 1989]

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in 22.1006(f) and 22.1009-4(c), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: ________ (insert places or areas). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by ________ (insert time and date).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

[54 FR 19832, May 8, 1989]

52.223-1 Clean Air and Water Certification.

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223-2, Clean Air and Water.

CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that—

(a) Any facility to be used in the performance of this proposed contract is ☐, is not ☐ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)

(AV 7-2003.71 1977 JUN)

(AV 1-1.2302-1)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.223-2 Clean Air and Water.

As prescribed in 23.105(b), insert the following clause in solicitations and contracts to which subpart 23.1 applies (see 23.101) if (a) the contract is expected to exceed $100,000; (b) the contracting officer believes that orders under an indefinite quantity contract in any year will exceed $100,000; or (c) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and (d) the acquisition is not otherwise exempt under 23.104.

CLEAN AIR AND WATER (APR 1984)

(a) *Air Act*, as used in this clause, means the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Clean air standards, as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

Clean water standards, as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency (EPA) or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

Compliance, as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency (EPA), or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

Facility, as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

Water Act, as used in this clause, means Clean Water Act (33 U.S.C. 1251 *et seq.*).

(b) The Contractor agrees—

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

(R 7-103.29 1975 OCT)

(R 1-1.2302)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (DEC 1989)

(a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.

(b) *Hazardous material*, as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.

(c) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(d) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(e) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under United States Government Contract No. ——— and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of ——— This legend shall be marked on any reproduction of this data."

(End of legend)

(5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-14, Rights in Data.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30078, Aug. 12, 1987; 54 FR 48994, Nov. 28, 1989]

52.223-4 Recovered Material Certification.

As prescribed in 23.405, insert the following provision in solicitations that incorporate specifications requiring the use of recovered materials.

RECOVERED MATERIAL CERTIFICATION (APR 1984)

The offeror certifies, by signing this offer, that recovered materials, as defined in section 23.402 of the Federal Acquisition Regulation, will be used as required by the applicable specifications.

(End of provision)

(AV 7-2003.82 1979 MAR)

(AV 1-1.2504)

§ 52.223-5 Certification Regarding A Drug-Free Workplace.

As prescribed in 23.505, insert the following provision:

CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this provision,

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

Drug-free workplace means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract. *Directly engaged* is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraph (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

(End of provision)

[54 FR 4970, Jan. 31, 1989; 54 FR 6931, Feb. 15, 1989, as amended at 55 FR 21708, May 25, 1990]

52.223-6 Drug-Free Workplace.

As prescribed in 23.505(b), insert the following clause:

DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this clause.

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

Drug-free workplace means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract. *Directly engaged* is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

[54 FR 4970, Jan. 31, 1989; 54 FR 6931, Feb. 15, 1989, as amended at 55 FR 21708, May 25, 1990; 55 FR 30465, July 26, 1990]

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

(R 7-2003.72 1975 NOV)

(R 1-1.327-5(b))

52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c)(1) *Operation of a system of records*, as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) *Record*, as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) *System of records on individuals*, as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

(AV 7-104.96 1975 NOV)

(AV 1-1.327-5(c))

52.225-1 Buy American Certificate.

As prescribed in 25.109(a), insert the following provision:

BUY AMERICAN CERTIFICATE (DEC 1989)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled *Buy American Act—Supplies*), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products	Country of Origin

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48994, Nov. 28, 1989]

52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.109(c), insert the following provision in solicitations for the acquisition of civil aircraft and related articles:

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (APR 1984)

(a) *Civil aircraft and related articles*, as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

(b) The U.S. Trade Representative has waived applying of the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) above) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1981, those countries and instrumentalities include Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland.

(c) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

(R 1-6.601-1)

52.225-3 Buy American Act—Supplies.

As prescribed in 25.109(d), insert the following clause:

BUY AMERICAN ACT—SUPPLIES (JAN 1989)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and subpart 25.1 of the Federal Acquisition Regulation.)

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986; 53 FR 27468, July

20, 1988; 53 FR 36028, Sept. 16, 1988; 53 FR 53341, Dec. 30, 1988]

52.225-4 [Reserved]

52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.205, insert the following clause in solicitations and contracts for construction inside the United States:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS (APR 1984)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction materials, as used in this clause, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

Domestic construction material, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and subpart 25.2 of the FAR).

(End of clause)

(R 7-602.20 1966 OCT)

(R 1-6.104-5)

(R 1-18.605)

52.225-6 Balance of Payments Program Certificate.

As prescribed in 25.305(a), insert the following provision:

BALANCE OF PAYMENTS PROGRAM CERTIFICATE (APR 1985)

(a) The offeror hereby certifies that each end product or service, except the end products or services listed below, is a domestic end product or service (as defined in the clause entitled ***Balance of Payments Program***) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products or Services

Line Item No.	Country of Origin

(List as necessary)

(b) For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.225-7 Balance of Payments Program.

As prescribed in 25.305(c), insert the following clause in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreeements Act of 1979 (see subpart 25.4):

BALANCE OF PAYMENTS PROGRAM (APR 1984)

(a) This clause implements the Balance of Payments Program by providing a preference for domestic end products or services over foreign end products or services.

Components, as used in this clause, means those articles, materials, and supplies directly incorporated into the end products.

Domestic end product, as used in this clause, means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components

mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in the United States in sufficient reasonably available commercial quantities of a satisfactory quality shall be treated as domestic. Components of unknown origin shall be considered foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

Domestic services, as used in this clause, means services performed in the United States. If services provided under a single contract are performed both in and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

End product, as used in this clause, means an article, material, or supply acquired for public use under this contract.

Foreign end product, as used in this clause, means a product other than a domestic end product.

(b) The contractor agrees that there will be delivered under this contract only domestic end products or services unless, in its offer, it specified delivery of foreign end products or services in the provision entitled *Balance of Payments Program Certificate*. An offer based on supplying a foreign end product or service, if accepted, will permit the contractor to supply a product or service without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

(End of clause)

(R 7-104.3)

52.225–8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed in 25.407(a)(1), insert the following provision:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAY 1986)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled *Buy American Act—Trade Agreements Act—Balance of Payments Program*) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

Line Item Number	Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated country end products or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as *designated country end products* as that term is defined in the clause entitled *Buy American Act—Trade Agreements Act—Balance of Payments Program*:

____

(Insert line item numbers)

(2) The offeror certifies that the following supplies qualify as *Caribbean Basin country end products* as that term is defined in the clause entitled *Buy American Act—Trade Agreements Act—Balance of Payments Program*:

____

(Insert line item numbers)

(d) Offers will be evaluated in accordance with part 25 of the Federal Acquisition Regulation.

(End of provision)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 16803, May 6, 1986]

52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

As prescribed in 25.407(a)(2), insert the following clause:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM (MAY 1986)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated country end products or Caribbean Basin country end products.

Caribbean Basin country end product, as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

End products, as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product, as used in this clause, means an end product other than a domestic end product.

(b) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled *Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate*. An offer certifying that a designated country end product or a Caribbean Basin country end product will be supplied requires the Contractor to supply a designated country end product or a Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product with a total value of $. . . [*Contracting Officers shall insert the dollar threshold amount distributed through agency procedures in accordance with FAR 25.402(a)*] or more unless the foreign end product is a designated country end product or a Caribbean Basin country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of part 25 of the FAR.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 6, 1985; 51 FR 16803, May 6, 1986]

52.225–10 Duty-Free Entry.

As prescribed in 25.605(a), insert the following clause in solicitations and contracts over $100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States. As prescribed in 25.605(b), the clause may be used in contracts of $100,000 or less if such action is consistent with the policy in 25.602. When used in contracts of $100,000 or less, paragraphs (b)(1) and (i)(2) shall be modified to reduce the dollar figure.

DUTY-FREE ENTRY (APR 1984)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for any duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(b) Except for supplies listed in the Schedule to be accorded duty-free entry, and except as provided under any other clause of this contract or in paragraph (c) below, the following procedures apply:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under this contract. The notice shall be furnished to the Contracting Officer at least 20 days before the importation and shall identify (i) the foreign supplies, (ii) the estimated amount of duty, and (iii) the country of origin.

(2) If the Contracting Officer determines that these supplies should be entered duty-free, the Contracting Officer shall notify the Contractor within 10 days.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(c) Paragraph (b) above shall not apply to purchases of foreign supplies if (1) they are identical in nature with items purchased by the Contractor or any subcontractor in connection with its commercial business and (2) segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor warrants that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract, and that duty shall be paid to the extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

(e) The Government agrees to execute any required duty-free entry certificates for items specified in this contract or approved by the Contracting Officer and to assist the Contractor in obtaining duty-free entry of the supplies.

(f) All shipping documents covering the supplies to be entered duty-free shall consign the shipments to the contracting agency in care of the Contractor and shall include the delivery address of the Contractor (or contracting agency, if appropriate). The documents shall bear the following information:

(1) Government prime contract number.

(2) Identification of carrier.

(3) The notation "UNITED STATES GOVERNMENT, —— [agency] ——, Duty-free entry to be claimed pursuant to Item No(s) —— [*from Tariff Schedules*] ——, Tariff Schedules of the United States (19 U.S.C. 1202). Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR 142 and notify —— [*cognizant contract administration office*] —— for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates."

(4) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(5) Estimated value in United States dollars.

(g) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (f) above, to mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency, and to accompany the shipment with at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(h) The Contractor agrees to notify in writing the cognizant contract administration office immediately upon notification from the Contracting Officer that duty-free entry will be accorded (or, if the duty-free supplies were listed in the contract Schedule, upon award by the Contractor to the overseas supplier). The notice shall identify (1) the foreign supplies, (2) the country of origin, (3) the contract number, and (4) the scheduled delivery date(s).

(i) The Contractor agrees to insert the substance of this clause in any subcontract under which—

(1) There will be imported into the customs territory of the United States supplies identified in the Schedule as supplies to be accorded duty-free entry; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

(End of clause)

(R 7-104.31(a) 1971 FEB)

(R 7-104.31(b) 1971 FEB)

(R 7-2003.49 1965 DEC)

52.225-11 Certain Communist Areas.

As prescribed in 25.704, insert the following clause in solicitations and contracts for supplies, services, or construction if acceptance is to take place outside the United States, its possessions, or Puerto Rico:

CERTAIN COMMUNIST AREAS (APR 1984)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract—

(1) Any supplies or services originating from sources within the Communist areas of North Korea, Vietnam, Cambodia, or Cuba; or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)

(R 7-103.15 1977 SEP)

52.225-12 Notice of Restrictions on Contracting With Sanctioned Persons.

As prescribed in 25.1005(a), insert the following provision:

NOTICE OF RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS (MAY 1989)

(a) Statutory prohibitions have been imposed on contracting with sanctioned persons, as specified in Federal Acquisition Regulation (FAR) 52.225-13, Restrictions on Contracting with Sanctioned Persons.

(b) By submission of this offer, the Offeror represents that no products or services, except those listed in this paragraph (b), delivered to the Government under any contract resulting from this solicitation will be products or services of a sanctioned person, as defined in the clause referenced in paragraph (a) of this provision, unless one of the exceptions in paragraph (d) of the clause at FAR 52.225-13 applies.

Product or service	Sanctioned person
....	....
....	....
....	....

(List as necessary)

(End of provision)

[54 FR 19832, May 8, 1989]

52.225-13 Restrictions on Contracting With Sanctioned Persons.

As prescribed in 25.1005(b), insert the following clause:

RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS (MAY 1989)

(a) *Definitions.* (1) *Component part,* means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) *Finished product,* means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) *Sanctioned person,* means a company or other foreign person upon whom prohibitions have been imposed.

(4) *Substantially transformed,* when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) *General.* Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of 3 years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrikk. The Act and Executive Order also prohibit, for the same 3-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) *Restriction.* Unless listed by the Contractor in its offer, in the solicitation provision at FAR 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, or unless one of the exceptions in paragraph (d) of this clause applies, the Contractor agrees that no products or services delivered to the Government under this contract will be products or services of a sanctioned person.

(d) *Exceptions.* The restrictions do not apply—

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person provided—

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand or name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and

(iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003 (a) or (b).

(e) *Award.* Award of any contract resulting from this solicitation will not affect the Contractor's obligation to comply with importation regulations of the Secretary of the Treasury.

(End of clause)

[54 FR 19832, May 8, 1989; 54 FR 21067, May 16, 1989]

52.225-14 Inconsistency between English version and translation of contract.

As prescribed at 25.902, insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1989)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

[54 FR 29283, July 11, 1989]

52.226 [Reserved]

52.227-1 Authorization and Consent.

As prescribed at 27.201-2(a), insert the following clause:

AUTHORIZATION AND CONSENT (APR 1984)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed $25,000 (however, omission of this clause from any subcontract, under or over $25,000, does not affect this authorization and consent.)

(End of clause)

(R 7-103.22 1961 JAN)

Alternate I (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(R 7-302.21 1964 MAR)

Alternate II (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.

(R 7-1702.5(a) 1971 APR)

[49 FR 12986, Mar. 30, 1984]

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 27.202-2, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

(R 7-103.23 1965 JAN)

[49 FR 12987, Mar. 30, 1984]

52.227-3 Patent Indemnity.

Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2)as applicable:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as *construction work*) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

(R 7-104.5 1975 JUN)

Alternate I (APR 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall not apply to the following items: ———————— [*Contracting Officer list and/or identify the items to be excluded from this indemnity*]

(R 7-104.5(a) 1964 SEP)

Alternate II (APR 1984). The following paragraph (c) is added to the clause:

(a) This patent indemnification shall cover the following items:————————

[*List and/or identify the items to be included under this indemnity*]

(R 7-104.5(a) 1964 SEP)

Alternate III (APR 1984). The following paragraph is added to the clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over $5,000 issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

(R 7-1701.10 1971 APR)

[49 FR 12987, Mar. 30, 1984]

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed at 27.203-5, insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

(R 7-602.16 1964 JUN)

Alternate I (APR 1984) Designate the first paragraph as paragraph(a) and add the following to the basic clause as paragraph (b):

(b) This patent indemnification shall not apply to the following items:

————————————————

[*Contracting Officer specifically identify the item to be excluded*]

(R 7-602.16(b) 1966 APR)

NOTE: Exclusion from indemnity of specified, identified patents, as distinguished from items, is the exclusive prerogative of the agency head or designee (See 27.203-6).

[49 FR 12987, Mar. 30, 1984]

52.227-5 Waiver of Indemnity.

As prescribed at 27.203-6, insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

————————————————

[*Contracting Officer identify the patents by number or by other means if more appropriate*]

(End of clause)

(AV 7-104.5(b) 1955 JAN)

[49 FR 12987, Mar. 30, 1984]

52.227-6 Royalty Information.

As prescribed at 27.204-2, insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision)

(R 7-2003.42 1961 AUG)

Alternate I. (APR 1984) Substitute the following for the introductory portion of paragraph (a) of the basic clause:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(R 7-1710.12)

[49 FR 12987, Mar. 30, 1984]

52.227-7 Patents—Notice of Government Licensee.

As prescribed at 27.204-3(c), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE (APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is ——— [*Contracting Officer fill in*], and the royalty rate is ——— [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

( ) Owner ( ) Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

(R 7-2003.15 1974 APR)

[49 FR 12988, Mar. 30, 1984]

52.227-8 Reporting of Royalties (Foreign).

As prescribed at 27.204-4, insert the following clause:

REPORTING OF ROYALTIES (FOREIGN) (APR 1984)

(a) If this contract is in an amount that exceeds 50,000 United States dollars, the Contractor shall report in writing to the Contracting Officer while performing this contract the amount of royalties paid or to be paid by the Contractor directly to others in performing this contract. The Contractor shall also (1) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (2) insert a provision similar to this clause in any subcontract at any tier that involves an amount in excess of the equivalent of 50,000 United States dollars.

(b) The term *royalties* as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause)

(R 7-104.8 1966 OCT)

[49 FR 12988, Mar. 30, 1984]

52.227-9 Refund of Royalties.

As prescribed at 27.206-2, insert the following clause. In solicitations and contracts with an incentive fee arrangement, change *price* to *target cost and target profit* wherever it appears.

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term *royalties* as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

(V 7-104.8(b) 1968 FEB)

[49 FR 12988, Mar. 30, 1984]

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.207-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified *Secret* or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified *Confidential*, the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

(End of clause)

(R 7-104.6 1969 DEC)

[49 FR 12988, Mar. 30, 1984]

52.227-11 Patent Rights-Retention by the Contractor (Short Form).

As prescribed in 27.303(a), insert the following clause:

PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1989)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type de-

scribed in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by contractor.* (1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title, or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c) (1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decided not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal Agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations, if any, concerning the licensing revocation of modification of the license.

(f) *Contractor action to protect the government's interest.* (1) the Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "The invention was made with Government support under (*identify the contract*) awarded by (*identify the Federal agency*). The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contrac-

tor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisifed by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of

the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.*

(Complete according to agency instructions.)

(End of clause)

Alternate I (JUN 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: ....*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUN 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of the contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (JUN 1989). As prescribed in 27.303(a)(4), substitute the following in place of subparagraph (k)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75 percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (JUN 1989). As prescribed in 27.303(a)(5), include the following subparagraph in paragraph (f) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

[54 FR 25069, June 12, 1989 and 55 FR 25525, June 21, 1990]

52.227-12 Patent Rights—Retention by the Contractor (Long Form)

As prescribed at 27.303(b), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM) (JUN 1989)

(a) *Definitions.*

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

Subject invention means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.* (1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical applciation in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the

Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter and (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.* (1) The Contractor shall include the clause at 52.227–11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227–12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees.; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* [Reserved]

(l) *Communications.* (Complete according to agency instructions.)

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(8) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount

shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of clause)

Alternate I (JUN 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: ....*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUNE 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreement with respect to subject inventions made after the date of the amendment.

[49 FR 12991, Mar. 30, 1984, as amended at 54 FR 25072, June 12, 1989; 54 FR 49296, Nov. 30, 1989; 55 FR 38518, Sept. 18, 1990]

52.227-13 Patent Rights—Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (JUN 1989)

(a) *Definitions.*

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(b) *Allocations of principal rights.* (1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in

which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in subparagraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

Alternate I (JUN 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: ....*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUN 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

[49 FR 12994, Mar. 30, 1984, as amended at 54 FR 25073, June 12, 1989]

52.227-14 Rights in Data—General.

As prescribed in 27.409(a), insert the following clause with any appropriate alternates:

RIGHTS IN DATA—GENERAL (JUN 1987)

(a) *Definitions.*

Computer software, as used in this clause, means computer programs, computer data bases, and documentation thereof.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocations of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided, however,* that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.*

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2)—(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

Alternate I (JUN 1987). As prescribed in 27.409(b), substitute the following definition for *Limited Rights Data* in paragraph (a) of the clause:

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (JUN 1987). As prescribed in 27.409(c), insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following *Limited Rights Notice* to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

(a) These data are submitted with limited rights under Government Contract No. ______ (and subcontract ______, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (JUN 1987). As prescribed in 27.409(d), insert the following subparagraph (g)(3) in the clause:

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following *Restricted Rights Notice* to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

(a) This computer software is submitted with restricted rights under Government Contract No.______ (and subcontract______, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b) (1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM) (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract

No.______ (and subcontract ______, if appropriate) with ______ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: *Unpublished—rights reserved under the Copyright Laws of the United States.*

Alternate IV (JUN 1987). As prescribed in 27.409(e), substitute the following subparagraph (c)(1) in the clause:

(c) *Copyright.* (1) *Data First Produced in the Performance of the Contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

Alternate V (JUN 1987). As prescribed in 27.409(f), add the following paragraph (j) to the clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

[52 FR 18150, May 13, 1987]

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(g), insert the following provision in solicitations that include the clause at 52.227-14, Rights in Data—General:

REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (JUN 1987)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its *Alternates II and/or III* to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of *Alternate V* with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include any of the aforementioned *Alternates* in the clause at 52.227-14, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, complete the representation in paragraph (b) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

REPRESENTATION CONCERNING DATA RIGHTS

Offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)—

☐ None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

☐ Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

____

____

____

____

NOTE: *Limited rights data* and *Restricted computer software* are defined in the contract clause entitled *Rights In Data—General.*

(End of provision)

[52 FR 18153, May 13, 1987, as amended at 55 FR 25532, June 21, 1990]

52.227-16 Additional Data Requirements.

As prescribed in 27.409(h), insert the following clause:

ADDITIONAL DATA REQUIREMENTS (JUN 1987)

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

[52 FR 18153, May 13, 1987]

52.227-17 Rights in Data—Special Works.

As prescribed in 27.409(i), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (JUN 1987)

(a) *Definitions.*

Data, as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.*

(i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

[52 FR 18153, May 13, 1987, as amended at 54 FR 34758, Aug. 21, 1989; 55 FR 25532, June 21, 1990]

52.227-18 Rights in Data—Existing Works.

As prescribed in 27.409(j), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (JUN 1987)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

[52 FR 18154, May 13, 1987]

52.227-19 Commercial Computer Software—Restricted Rights.

As prescribed in 27.409(k), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—RESTRICTED RIGHTS (JUN 1987)

(a) As used in this clause, *restricted computer software* means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or—privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws and the Federal Acquisition Regulation.

(c)(1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so: *Notice*—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract (or Purchase Order) No. _____.)

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: *Unpublished—rights reserved under the copyright laws of the United States.*

(End of clause)

[52 FR 18154, May 13, 1987]

52.227–20 Rights in Data—SBIR Program.

As prescribed in 27.409(1), insert the following clause:

RIGHTS IN DATA—SBIR PROGRAM
(JUN 1987)

(a) *Definitions.*

Computer software, as used in this clause, means computer programs, computer data bases, and documentation thereof.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

SBIR data, as used in this clause, means data first produced by a Contractor that is a small business firm in performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 97-219, Small Business Innovation Development Act of 1982), which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

SBIR rights, as used in this clause, mean the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—

(i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* (1) The Contractor is authorized to affix the following *SBIR Rights Notice* to SBIR data delivered under this contract and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

SBIR RIGHTS NOTICE (JUN 1987)

These SBIR data are furnished with SBIR rights under Contract No._____ (and subcontract _____ if appropriate). For a period of 2 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Contractors. After the aforesaid 2-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within six months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) *Protection of limited rights data.* When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and such data qualify as either limited rights data or restricted computer software, the Contractor, if the Contractor desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

[52 FR 18155, May 13, 1987, as amended at 55 FR 25532, June 21, 1990]

52.227-21 Technical Data Certification, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(q), insert the following clause:

TECHNICAL DATA CERTIFICATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JUN 1987)

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.* (1) All technical data that are subject to this clause shall be accompanied by the following certification upon delivery:

TECHNICAL DATA CERTIFICATION (JUN 1987)

The Contractor, __________, hereby certifies that to the best of its knowledge and belief the technical data delivered herewith under Government contract No.____ (and subcontract ____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of certification)

(2) The Government shall rely on the certification set out in subparagraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. Such corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer's opinion respecting any technical data that are subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the certification required by subparagraph (b)(1) of this clause;

(iii) Make the corrections required by subparagraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in subparagraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

[52 FR 18155, May 13, 1987]

52.227-22 Major system—Minimum Rights.

As prescribed in 27.409(r), insert the following clause:

MAJOR SYSTEM—MINIMUM RIGHTS (JUN 1987)

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

[52 FR 18156, May 13, 1987]

52.227-23 Rights to Proposal Data (Technical).

As prescribed in 27.409(s), insert the following clause:

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages ____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the *Rights in Data—General* clause contained in this contract) in and to the technical data contained in the proposal dated ____, upon which this contract is based.

(End of clause)

[52 FR 18156, May 13, 1987]

52.228-1 Bid Guarantee.

As prescribed in 28.101-3(b), insert the following clause in solicitations and contracts.

BID GUARANTEE (APR 1984)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The offeror (bidder) shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the bid, the bidder will (1) allow 60 days for acceptance of its bid and (2) give bond within 10 days after receipt of the forms by the bidder.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)

(R 1-10.103-3)

(R 7-2003.25 1964 JUN)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 19805, May 27, 1987]

52.228-2 Additional Bond Security.

As prescribed in 28.106-4, insert the following clause in solicitations and contracts when bonds are required:

ADDITIONAL BOND SECURITY (APR 1984)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government; or

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

(End of clause)

(R 1-7.103-2)

(R 1-7.602-17)

(R 7-103.9 1949 JUL)

(R 7-602.17 1976 OCT)

52.228-3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause in solicitations and contracts when the Defense Base Act applies (see 28.305) and (a) the contract will be a public-work contract performed outside the United States; or (b) the contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by 28.305(b)(2):

WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (APR 1984)

The Contractor shall (a) provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651 et seq.) requires and (b) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.

(End of clause)

(R 7-104.2(a) 1960 JAN)

(R 1-10.402(a))

52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see 28.305(d)):

WORKERS' COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)

(a) This paragraph applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the Defense Base Act (42 U.S.C. 1651 et seq.). On behalf of employees for whom the applicability of the Defense Base Act has been waived, the Contractor shall (1) provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require and (2) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act would apply but for the waiver, a clause similar to this paragraph (a) (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

(b) This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent. Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph (b) (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

(End of clause)

(R 7-104.2(b) 1968 JUL)

52.228-5 Insurance—Work on a Government Installation.

As prescribed in 28.310, insert the following clause:

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (SEP 1989)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

[54 FR 34758, Aug. 21, 1989]

52.228-6 Insurance—Immunity From Tort Liability.

As prescribed in 28.311-1, insert the following provision in solicitations for research and development when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at 52.228-7, Insurance—Liability to Third Persons:

INSURANCE—IMMUNITY FROM TORT LIABILITY (APR 1984)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, and includes in its offer a representation to that effect, the clause at 52.228-7, Insurance—Liability to Third Persons, will be included in the contract.

(a) With its Alternate I, if the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution; or

(b) With its Alternate II, if the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution.

(End of provision)

(NM)

52.228-7 Insurance—Liability to Third Persons.

As prescribed in 28.311-2, insert the following clause in solicitations and contracts, other than construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless the head of the contracting activity waives the requirement for use of the clause:

INSURANCE—LIABILITY TO THIRD PERSONS (APR 1984)

(a) (1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; *provided* that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

(R 7-203.22 1966 DEC)

(R 1-7.204-5)

Alternate I (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *partially* immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided*, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

(R 1-7.404-9(a))

(R 7-402.26 1962 SEP)

Alternate II (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *totally* immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

(R 7-402.26(b) 1960 OCT)

(R 1-7.404-9(b))

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause in solicitation and contracts for the leasing of motor vehicles (see subpart 8.11):

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (APR 1984)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage,

injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-26870).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The Contractor warrants that the contract price includes no cost for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

(R 7-1501.4 1977 JAN)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause in solicitations and contracts for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value:

CARGO INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to provide and maintain, during the continuance of this contract, cargo liability insurance of $—— per vehicle to cover the value of property on each vehicle and of $—— to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to ———— [*insert name of contracting agency*], and policies shall include such terms and conditions as required by ———— [*insert name of contracting agency*]. As evidence of insurance maintained, a complete duplicate certified copy of the cargo liability insurance policy or policies shall be furnished to ———— [*insert name of contracting agency*]. Evidence of acceptable cargo insurance shall be furnished before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

It is a condition of this policy that the Company shall furnish—

(1) Written notice to ———— [*insert name of contracting agency*], at the address shown on the face sheet of this contract, 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) A complete duplicate certified copy of any renewal policy to ———— [*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with ———— [*insert name of contracting agency*].

(End of clause)

(R 1-19.702-5)

52.228-10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for (1) bodily injury of not less than $—— for each person and $—— for each occurrence and (2) property damage of not less than $—— for each accident and $—— in the aggregate.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

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(End of clause)

(R 1-19.702-5)

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (FEB 1990)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government sureties held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owner; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

[54 FR 48995, Nov. 28, 1989]

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause in solicitations and contracts for leased equipment, when a fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and the place or places of delivery are not known at the time of contracting:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

(R 41 CFR 5A-11.401-71)

(R GSA Form 2891)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) *Materials*, as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period ——— to ——— [*insert dates*], ——— [*insert name of Contractor or subcontractor*] paid North Carolina State and local sales and use taxes aggregating $——— (State) and $——— (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by ——— [*insert name of Contractor or subcontractor*] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

Alternate I (APR 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) ***Materials***, as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

(R 7-602.27 1977 JAN)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.229-3 Federal, State, and Local Taxes.

As prescribed in 29.401-3, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES
(APR 1984)

(a) *Contract date*, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

All applicable Federal, State, and local taxes and duties, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

After-imposed Federal tax, as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

After-relieved Federal tax, as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(R 7-103.10(a) 1971 NOV)

(R 1-11.401-1(c))

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).

As prescribed in 29.401-4, insert the following clause in fixed-price noncompetitive negotiated contracts over the applicable small purchase limitation in part 13 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when the contracting officer is satisfied (a) that the contract price does not include contingencies for State and local taxes and (b) that, unless the clause is used, the contract price will include such contingencies. When the following clause is included in a contract, the contracting officer shall ensure that the contract does not include the clause at 52.229-3, Federal, State, and Local Taxes.

FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE CONTRACT) (APR 1984)

(a) *Contract date*, as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

All applicable Federal, State, and local taxes and duties, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

After-imposed tax, as used in this clause, means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax, as used in this clause, means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax, as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. *Excepted tax* does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(b) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when (1) the Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price and (2) a reasonable basis exists to sustain the exemption.

(End of clause)

(R 7-103.10(b) 1960 JUL)

(R 1-11.401-2(d))

52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.

As prescribed in 29.401-5, insert the following clause in solicitations and contracts that include the clause at 52.229-3, Federal, State, and Local Taxes, or 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract):

TAXES—CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term *local taxes,* as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

(AV 7-103.10(c) 1963 NOV)

(AV 1-11.401-3(a))

52.229-6 Taxes—Foreign Fixed-Price Contracts.

As prescribed in 29.402-1(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government:

TAXES—FOREIGN FIXED-PRICE CONTRACTS (APR 1984)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) *Contract date,* as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned, as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

Tax and *taxes,* as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

All applicable taxes and duties, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

After-imposed tax, as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax, as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax, as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. *Excepted tax* does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

(R 7-103.10(d) 1977 JAN)

52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.

As prescribed in 29.402-1(b), insert the following clause in solicitations and contracts when a fixed-price contract with foreign governments is contemplated:

TAXES—FIXED-PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (APR 1984)

(a) *Contract date*, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of ——— [*insert name of the foreign government*] have agreed shall not apply to expenditures made by the United States in ——— [*insert name of country*], or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of ——— [*insert name of country*]. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(c) If, after the contract date, the Government of the United States and the Government of ——— [*insert name of the foreign government*] agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in ——— [*insert name of country*], the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(End of clause)

(R 7-103.10(e) 1960 JUL)

52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause:

TAXES—FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of ——— [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this contract is exempt under the laws of ——— [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 3889, Feb. 5, 1990]

52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause:

TAXES—COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of ——— [*insert name of the foreign government*], or from which any subcontractor under this contract is exempt under the laws of ——— [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 3889, Feb. 5, 1990]

52.229-10 State of New Mexico Gross Receipts and Compensating Tax.

As prescribed in 29.401-6(b), insert the following clause:

STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (*———) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Contractor only if such property is not used for Federal purposes.

(g) The (*———) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*———), may participate in any matters or proceedings pertaining to this clause or the above-mentioned agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*———) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b) (1) through (3) of the Federal Acquisition Regulation, 48 CFR part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(End of clause)

(*Insert appropriate agency name in blanks.)

[53 FR 34229, Sept. 2, 1988; 53 FR 36028, Sept. 16, 1988]

52.230-1 Cost Accounting Standards Notices and Certification (National Defense).

As prescribed in 30.201-3(a), insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NATIONAL DEFENSE) (SEP 1987)

Note: This notice does not apply to small businesses or foreign governments.

This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of $100,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities of the general public, or (2) prices set by law or regulation, will be subject to the requirements of Federal Acquisition Regulation (FAR) subparts 30.3 and 30.4, except for those contracts which are exempt as specified in FAR 30.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of FAR subparts 30.3 and 30.4 must, as a condition of contracting, submit a Disclosure Statement as required by FAR 30.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION:

A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement: ————

Name and Address of Cognizant ACO where filed: ————————————

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: ————

Name and Address of Cognizant ACO where filed: ————————————

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption. The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with FAR 30.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraphs (c)(1) or (c)(2) or Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION:

Offerors currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of $10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—EXEMPTION FOR CONTRACTS OF $500,000 OR LESS

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of Federal Acquisition Regulation (FAR) 30.201-1(b)(7) and certifies that notification of final acceptance of all deliverable items has been received on all prime contracts or subcontracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. The offeror further certifies that the Contracting Officer will be immediately notified in writing when an award of any other contract or subcontract containing Cost Accounting Standards clauses is received by the offeror subsequent to this certificate but before the date of any award resulting from this proposal.

III. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of Federal Acquisition Regulation (FAR) 30.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of FAR 30.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION:

An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a national defense contract of $10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

IV. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES ☐ NO

Note: If the offeror has checked *yes* above and is awarded the contemplated contract, the offeror will be required to comply with the requirements of subparagraph (a)(1) and paragraphs (b) and (c) of the Administration of Cost Accounting Standards clause.

(End of provision)

[52 FR 35669, Sept. 22, 1987]

52.230-2 Cost Accounting Standards Notices and Certification (Nondefense).

As prescribed in 30.201-3(b), insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NONDEFENSE) (SEP 1987)

Note: This notice does not apply to small businesses or foreign governments.

(a) Any contract over $100,000 resulting from this solicitation shall be subject to Cost Accounting Standards (CAS) if it is awarded to a business unit that is currently performing a national defense CAS-covered contract or subcontract, except when——

(1) The award is based on adequate price competition;

(2) The price is set by law or regulation;

(3) The price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(4) One of the exemptions in Federal Acquisition Regulation (FAR) 30.201-1(b) applies.

(b) Contracts not exempted from CAS shall be subject to full or modified coverage as follows:

(1) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to full CAS coverage FAR 30.201-2(a), this contract will have full CAS coverage and will contain the clauses from the FAR entitled Cost Accounting Standards, 52.230-3 and Administration of Cost Accounting Standards, 52.230-4.

(2) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to modified CAS coverage FAR 30.201-2(b), this contract will have modified coverage and will contain the clauses entitled Disclosure and Consistency of Cost Accounting Practices, 52.230-5 and Administration of Cost Accounting Standards, 52.230-4.

A. Certificate of CAS Applicability

The offeror hereby certifies that—

☐ The offeror is not performing any CAS-covered national defense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing if it is awarded any national defense CAS-covered contract or subcontract subsequent to the date of this certificate but before the date the award of a contract resulting from this solicitation. (If this statement applies, no further certification is required.)

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Cost Accounting Standards clause at FAR 52.230-3.

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-5.

B. Additional Certification—CAS Applicable Offerors

☐ The offeror subject to Cost Accounting Standards further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement where it has been submitted as required by FAR 30.202-1 through 30.202-5.

C. Data Required—CAS Covered Offerors

The offeror certifying that it is currently performing a national defense contract containing either CAS clause (see A above) is required to furnish the name, address (including agency or department component), and telephone number of the cognizant Contracting Officer administering the offeror's CAS-covered contracts.

Name of Contracting Officer ——————
Address: ——————————————
——————————————————
Telephone Number: ——————————

(End of provision)

[52 FR 35670, Sept. 22, 1987]

52.230-3 Cost Accounting Standards.

As prescribed in 30.201-4(a), insert the following clause:

COST ACCOUNTING STANDARDS (SEP 1987)

(a) Unless the contract is exempt under FAR 30.201-1 and 30.201-2, the provisions of Federal Acquisition Regulation (FAR) subpart 30.3 are incorporated herein by reference and the Contractor) in connection with this contract, shall—

(1) (National Defense Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by FAR 30.202-1 through 30.202-5. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the

Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in FAR subpart 30.4, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in FAR subpart 30.4 or a CAS rule or regulation in FAR subpart 30.3 and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

Note (1): New or modified CAS shall be applicable to both national defense and nondefense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new or modified Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS or modification to CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in subparagraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards as specified in FAR subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to FAR 30.201-2(b) is entitled to elect modified contract coverage and to follow FAR 30.401 and FAR 30.402, the clause at 52.230-5, *Disclosure Consistency of Cost Accounting Practices*, of the Federal Acquisition Regulation shall be inserted in lieu of this clause.

Note (5): The terms defined in FAR 30.301 and FAR 31.001 shall have the same meanings herein. As there defined *negotiated subcontract* means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(End of clause)

[52 FR 35670, Sept. 22, 1987]

52.230-4 Administration of Cost Accounting Standards.

As prescribed in FAR 30.201-4(b)(1), insert the following clause:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (SEP 1987)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the cognizant Contracting Officer a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. If the cost impact proposal is not submitted within the specified time, or any extension granted by the cognizant Contracting Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—(1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and (2) include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

[52 FR 35671, Sept. 22, 1987]

52.230–5 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201-4(c)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (SEP 1987)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 30.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 30.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract as indicated in Federal Acquisition Regulation (FAR) subpart 30.4.

(2) (National Defense Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by FAR 30.202-1 through 30.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

Note (1): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the Contracting Officer.

Note (2): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of the subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if it or a subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and standards as specified in FAR subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in FAR subpart 30.3 and FAR 31.001 shall have the same meanings in this clause. As there defined, *negotiated subcontract* means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in FAR subparts 30.3 and 30.4 and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to FAR 30.201 is required to follow all CAS, the clause entitled *Cost Accounting Standards*, set forth in FAR 52.230-3, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

(End of clause)

[52 FR 35672, Sept. 22, 1987]

52.230-6 Consistency in Cost Accounting Practices.

As prescribed in 30.201-4(d), insert the following clause:

CONSISTENCY IN COST ACCOUNTING PRACTICES (SEP 1987)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form No. CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with payment of interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

[52 FR 35672, Sept. 22, 1987]

52.231 [Reserved]

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(End of clause)

(R 7-103.7 1958 JAN)

(R 1-7.102-7)

52.232-2 Payments under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

(R 7-302.2 1959 JUN)

(R 1-7.302-2)

52.232-3 Payments under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract. The Government shall also pay the Contractor (a) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in appropriate Travel Orders; and (b) any other transportation expenses if provided for in the Schedule.

(End of clause)

(R 7-503.2 1958 JAN)

52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:

PAYMENTS UNDER TRANSPORTATION CONTRACTS AND TRANSPORTATION-RELATED SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)

(R 7-103.7 1958 JAN)

(R1-7.703-5)

52.232-5 Payments under Fixed—Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1989)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the Contracting Officer. In the preparation of estimates the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Along with each request for progress payments, the contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

____

(Name)

____

(Title)

____

(Date)

(d) If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the *unearned amount*), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in 31 U.S.C. 3903(c)(1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) above shall not apply to that portion of progress payments attributable to bond premiums.

(h) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of

this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A *contract action* is any action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 51 FR 2666, Jan. 17, 1986; 51 FR 19717, May 30, 1986; 52 FR 30078, Aug. 12, 1987; 54 FR 13337, Mar. 31, 1989]

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled *Rates, Charges and Services.*

(End of clause)

(AV 7-1702.10 1971 APR)

52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(b), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (APR 1984)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) below, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) below.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause; *provided*, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under subparagraph (1) above; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) above.

(3) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the *completion voucher* or *completion invoice* and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) below), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) *Refunds.* The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

(R 7-901.6 1972 MAY)

Alternate I (APR 1984). If the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor, and the price is under the limitations prescribed in 16.601(b)(3), add the following subparagraph (4) to paragraph (b) of the basic clause:

(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; *provided*, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(AV 7-901.6 1972 MAY)

Alternate II (JAN 1986). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (h) to the basic clause:

(h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2667, Jan. 17, 1986]

52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(c)(1), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT
(APR 1989)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 54 FR 13337, Mar. 31, 1989]

52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(c)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

(R 7-104.21 1958 SEP)

(R 7-403.12 1959 FEB)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.111(d)(1), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the *Statement of Architect-Engineer Services*, the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A *contract action* is any action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 52 FR 30078, Aug. 12, 1987; 55 FR 38518, Sept. 18, 1990]

52.232-11 Extras.

As prescribed in 32.111(d)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

(V 7-103.3 1949 JUL)

(V 1-7.102-3)

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b):

ADVANCE PAYMENTS (APR 1984)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, ——— ——— [*Insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $——— If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Special bank account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special bank account with the ——— [*Insert the name of the bank*]. None of the funds in the special bank account shall be mingled with other funds of the Contractor. Withdrawals from the special bank account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

(c) *Use of funds.* The Contractor may withdraw funds from the special bank account only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Other withdrawals require approval in writing by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(d) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) above. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments may be withdrawn from the special bank account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed —— percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $——, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $—— [*Insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(g) *Bank Agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the bank in which the special bank account is established, clearly setting forth the special character of the account and the responsibilities of the bank under the account. If possible, the Contractor shall select a bank that is a member bank of the Federal Reserve System or is an *insured* bank within the meaning the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811).

(h) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the special bank account paramount to all other liens. The Government lien shall secure the repayment of any advance payments made under this contract and any related interest charges.

(i) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the Contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(j) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(k) *Default.* (1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further withdrawals from the special bank account and further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special bank account.

(v) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (1) above continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Withdraw by checks payable to the Treasurer of the United States, signed only by the countersigning agency, all or any part of the balance in the special bank account and apply the amounts to reduce outstanding advance payments and any other claims of the Government against the Contractor.

(ii) Charge interest, in the manner prescribed in paragraph (f) above, on outstanding advance payments during the period of any event described in subparagraph (1) above.

(iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(l) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(m) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special bank account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(o) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(p) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over $— a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $——— in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $———; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[*List the pertinent obligations*]

(End of clause)

(R 7-104.34 1976 OCT)

(R 1-30.414-2)

Alternate I (APR 1984). If the agency desires to waive the countersignature requirement because of the Contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, add the following sentence, if appropriate, to paragraph (b) of the basic clause:

However, for this contract, countersignature on behalf of the Government will not be required unless it is determined necessary by the administering office.

(R 7-104.34 1976 OCT)

(R 1-30.414-2(b))

Alternate II (APR 1984). If used in a cost-reimbursement contract, substitute the following paragraphs (c) and (e), and subparagraphs (f)(1) and (f)(2) for paragraphs (c) and (e) and subparagraphs (f)(1) and (2) of the basic clause:

(c) *Use of funds.* The Contractor shall withdraw funds from the special bank account only to pay for allowable costs as prescribed by the ——— clause of this contract. Payment for any other types of expenses shall be approved in writing by the administering office.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of $ ——— (not including fixed-fee, if any) for the work under this contract, the Government shall withhold further payments to the Contractor. Upon completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed $——— [*Insert an amount not higher than 10 percent of the stated estimated cost inserted in this paragraph.*] The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Contracting Officer) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following shall be observed:

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check.

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.

(iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer's certification of the applicable dates.

(2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(R 7-104.34 1976 OCT)

(R 1-30.414-2(c), (e), and (f))

Alternate III (APR 1984). If the agency considers a more rapid liquidation appropriate, add the following sentence as the first sentence of paragraph (e) of the basic clause with the appropriate percentage specified:

To liquidate the principal amount of any advance payment made to the Contractor, there shall be deductions of ——— percent from all payments made by the Government under the contracts involved.

(R 7-104.34 1976 OCT)

(R 1-30.414-2(e))

Alternate IV (APR 1984). If the agency provides advance payments under the contract at no interest to the prime contractor, add the following sentences as the beginning sentences of paragraph (f) of the clause:

No interest shall be charged to the prime Contractor for advance payments except for interest charged during a period of default. The terms of this paragraph concerning interest charges for advance payments shall not apply to the prime Contractor.

(R 7-104.34 1976 OCT)

(R 1-30.414-2(n)(3))

Alternate V (JUL 1990). If the requirement for a special bank account is eliminated in accordance with 32.409-3 (e) or (g), insert the clause set forth below instead of the basic clause.

If this Alternate is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), *Use of funds*, in *Alternate II;* substitute paragraph (e), *Maximum payment*, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), *Interest*, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this Alternate is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentences of paragraph (e) of this Alternate.

ADVANCE PAYMENTS WITHOUT SPECIAL BANK ACCOUNT (JUL 1990)

(a) *Requirements for payment*. Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, ----- [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $----. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds*. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(c) *Repayment to the Government*. At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment*. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed ----- percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $----, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $---- [*insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) *Interest*. (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in subparagraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory comple-

tion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable worker's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(h) *Default.* (1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Con-

tractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(k) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has takken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(m) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accure excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over ---- a year.

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insure by the Federal Deposit Insurance Corporation.

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $---- in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than -----; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25532, June 21, 1990]

52.232-13 Notice of Progress Payments.

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

(R 7-2003.64 APR 1974)

(R 1-30.504-4(a))

52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.

As prescribed in 32.502-3(b)(2), insert the following provision in invitations for bids if it is anticipated that (a) both small business concerns and others may submit bids in response to the same invitation and (b) only the small business bidders would need progress payments:

NOTICE OF AVAILABILITY OF PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS CONCERNS (APR 1984)

The Progress Payments clause will be available only to small business concerns. Any bid conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive if the bidder is not a small business concern.

(End of provision)

(R 7-2003.63 APR 74)

(R 1-30.504-4(c))

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3(a) and (b):

PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)

(R E-504.5 JULY 1976)

(R 1-30.504-6)

52.232-16 Progress Payments.

(a) As prescribed in 32.502-4(a), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 32.501-1 for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see 32.501-2), the rate approved shall be substituted for the customary rate in paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see 32.503-8 and 32.503-9), the new rate shall be substituted for the rate in paragraphs (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words *less any unliquidated advance payments* may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see 32.504(b) and 32.501-2), subparagraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

PROGRESS PAYMENTS (AUG 1987)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 80 percent of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars; or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation*. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension*. The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title*. (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) *Property*, as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress payments to subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, 4 months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, for any subcontractor that is a large business concern, or that clause with its *Alternate I* for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had

been assigned and transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A *contract action* is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of clause)

Alternate I (AUG 1987). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see 32.501-1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 85 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

Alternate II (AUG 1987). If the contract is a letter contract, add paragraphs (l) and (m). The amount specified in paragraph (m) shall not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definite contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure

in subparagraphs (l)(1) and (l)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed . . . . (*specify dollar amount*).

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30078, Aug. 12, 1987]

52.232-17 **Interest.**

As prescribed in 32.617(a), insert the following clause in solicitations and contracts unless it is contemplated that the contract will be in one or more of the categories specified in 32.617(a)(1) through 32.617(a)(7). As prescribed in 32.617(b), the following clause may be inserted in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a)(1) through 32.617(a)(7):

INTEREST (APR 1984)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

(R 7-104.39 1972 MAY)

(R 1-7.203-15)

52.232-18 **Availability of Funds.**

As prescribed in 32.705-1(a), insert the following clause in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contracting action is to be initiated before the funds are available:

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

(SS 7-104.91(a) 1962 SEP)

52.232-19 **Availability of Funds for the Next Fiscal Year.**

As prescribed in 32.705-1(b), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703-2(b)):

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond ————. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond ————, until funds are made available to the Contracting

Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

(SS 7-104.91(b) 1975 JUN)

52.232-20 Limitation of Cost.

As prescribed in 32.705-2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. *Task Order* or other appropriate designation may be substituted for *Schedule* wherever that word appears in the clause.

LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

(R 7-203.3(a) 1966 OCT)

(R 7-402.2(a) 1966 OCT)

(R 7-402.2(b) 1973 MAY)

(R 1-7.202-3(a))

(R 1-7.402-2(a) & (b))

52.232-21 Limitation of Cost (Facilities).

As prescribed in 32.705-2(b), insert the following clause in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301):

LIMITATION OF COST (FACILITIES) (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule within the estimated cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs that the Contractor expects to incur under this contract in the next 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the Schedule; or

(2) The total cost to the Government for the performance of this contract will be either greater or substantially less than had previously been estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the contractor for costs incurred in excess of the estimated cost specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(End of clause)

(R 7-702.11)

52.232-22 Limitation of Funds.

As prescribed in 32.705-2(c), insert the following clause in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. *Task Order* or other appropriate designation may be substituted for *Schedule* wherever that word appears in the clause.

LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or, (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by the Government or, (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

(End of clause)

(R 7-203.3(b) 1966 OCT)

(R 7-402.2(c) & (d) 1966 OCT)

(R 1-7.202-3(b)

(R 1-7.402-2(c) & (d))

52.232-23 Assignment of Claims.

As prescribed in 32.806(a)(1), insert the following clause:

ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as *the Act*), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

Alternate I (APR 1984). If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)), add the following sentence at the end of paragraph (a) of the basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(R 7-103.8 1962 FEB)

(R 1-30.703 1976 MAY)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2667, Jan. 17, 1986]

52.232-24 Prohibition of Assignment of Claims.

As prescribed in 32.806(b), insert the following clause:

PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2667, Jan. 17, 1986]

52.232-25 Prompt payment.

As prescribed in 32.908(c), insert the following clause:

(a) As authorized in 32.905(a)(1)(ii), the Contracting Officer may modify the date in subdivision (a)(6)(i) of this clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed, except in the case of a contract for the procurement of a brand-name commercial item for authorized resale.

PROMPT PAYMENT (APR 1989)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term *foreign vendor* means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

(a) *Invoice Payments* (1) For purposes of this clause, *invoice payment* means a Government disbursement of monies to a Contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the Contractor.

(2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat and meat food products, contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in section 2(a) (3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182 (3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.

(ii) The due date for perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(iii) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.

(iv) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(4) An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing officer specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat and meat food products and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(6) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(5) An interest penalty shall be paid automatically by the Government, without request from the contractor, if payment is not made by the due date and the conditions listed in subdivisions (a) (5) (i) through (a) (5) (iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other government authority. This rate is referred to as the *Renegotiation Board Interest Rate*, and it is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in

calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat and meat food products and 5 days for perishable agricultural commodities, dairy products, edible fat or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(7) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) *Contract Financing Payments* (1) For purposes of this clause, *contract financing payment* means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.

(2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (*insert day as prescribed by Agency head; if not prescribed, insert 30th day*) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(4) Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) If this contract contains the clause at 5.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

[53 FR 3693, Feb. 8, 1988, as amended at 54 FR 13337, Mar. 31, 1989; 54 FR 29283, July 11, 1989]

52.232-26 Prompt payment for fixed-price architect-engineer contracts.

As prescribed in 32.908(a), insert the following clause:

(a) As authorized in 32.905(b)(4), the Contracting Officer may modify the date in subdivision (a)(5)(i) of this clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the property furnished or evaluate the services performed.

(b) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of this clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (APR 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term *foreign vendor* means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

(a) *Invoice Payments.* (1) For purposes of this clause, *invoice payment* means a Government disbursement of monies to a Contractor under a contract or other authorization for work or services accepted by the Government, payments for partial deliveries that have been accepted by the Government, and progress payments based on contracting officer approval of the estimated amount and value of work or services performed.

(2) the due date for making invoice payments shall be as described in this subparagraph (a)(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be deemed to be the 30th day after the date the Contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for work or services performed (including other number and contract line item number.)

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(4) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day prescribed by other governmental authority. This rate is referred to as the *Renegotiation Board Interest Rate*, and it is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(5)(i) (A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claims for such penalties under the clause at 52.233-1, Disputes, or for more than 1 years. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) *Contract Financing Payments*. (1) For purposes of this clause, if applicable, *contract financing payment*, means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loan, or other arrangements that do not involve recurrent submissions of contract financing request, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

[54 FR 13338, Mar. 31, 1989]

52.232-27 Prompt payment for construction contracts.

As prescribed in 32.908(b), insert the following clause:

(a) As authorized in 32.905(c)(1), the Contracting Officer may modify the date in subdivision (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(b) As authorized in 32.905(c)(5), the Contracting Officer may modify the date in subdivision (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (APR 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified The term *foreign vendor* means an incorporated concern not incorporated in the United States or an unincorporated concern having its principal place of business outside the United States.

(a) *Invoice Payments.* (1) For purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the Contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number of other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the *Renegotiation Board Interest Rate*, and it is published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) *Contract Financing Payments.* (1) For purposes of this clause, if applicable, *contract financing payments* means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under cost-type contracts.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment dalays.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under the contract.

(2) An interest penalty clause obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the FEDERAL REGISTER, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligations to pay an interest penalty.

(3) A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by paragraph (c) of this clause shall not be constructed to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which—

(1) Permit the Contractor of a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with

terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Permit the Contractor or subcontractor to make determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor, and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f)(1) If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a *second-tier subcontractor*) a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be utlimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

[54 FR 13340, Mar. 31, 1989; 54 FR 16194, Apr. 21, 1989]

52.232-28 Electronic funds transfer payment methods.

As prescribed in 32.908(d), insert the following clause:

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (APR 1989)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment thorugh ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Contractor is a new enrollee to the ACH system, a *Payment Information Form*, SF 3881, must be completed before payment can be processed.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

[54 FR 13342, Mar. 31, 1989]

52.233-1 **Disputes.**

As prescribed in 33.214, insert the following clause:

DISPUTES (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) *Claim*, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that—

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by—

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(R 7-103.12 1980 JUN)

(R FPR Temporary Regulation 55-II 1980 JUN)

Alternate I (APR 1984). If it is determined under agency procedures, that continued performance is necessary pending resolution of any claim arising under or relating to the contract, substitute the following paragraph (h) for the paragraph (h) of the basic clause:

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(AV 7-103.12(h) 1980 JUN)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 51 FR 36972, Oct. 16, 1986]

52.233-2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (NOV 1988)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from __________ (*Contracting Officer designate the official and location where a protest may be served on the Contracting Officer.*)

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(End of provision)

[53 FR 43394, Oct. 26, 1988]

52.233-3 Protest after award.

As prescribed in 33.106(b), insert the following clause:

PROTEST AFTER AWARD (AUG 1989)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(End of clause)

Alternate I (JUN 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

[50 FR 25681, June 20, 1985, as amended at 54 FR 29284, July 11, 1989]

52.234—52.235 [Reserved]

52.236-1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be $1,000,000 or less. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)).

PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least ——— [*insert the appropriate number in words followed by numerals in parentheses*] percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

(R 7-603.15 1965 JAN)

(R 1-18.104)

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

(R 7-602.4 1968 FEB)

(R 1-7.602-4)

52.236-3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.503, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from al inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

(R 7-602.14 1964 JUN)

(R 1-7.602-14)

(R 7-602.33 1965 JAN)

52.236-4 Physical Data.

As prescribed in 36.504, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic, weather conditions data) will be furnished or made available to offerors. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause. When subparagraphs are not applicable they may be deleted.

PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by ———— [*insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels*].

(b) Weather conditions ———— [*insert a summary of weather records and warnings*].

(c) Transportation facilities ———— [*insert a summary of transportation facilities providing access from the site, including information about their availability and limitations*].

(d) ———— [*Insert other pertinent information*].

(End of clause)

(R 7-603.25 1965 JAN)

52.236-5 Material and Workmanship.

As prescribed in 36.505, insert the following clause:

MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

(R 7-602.9 1964 JUN)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48995, Nov. 28, 1989]

52.236-6 Superintendence by the Contractor.

As prescribed in 36.506, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

(R 7-602.12 1978 OCT)

(R 1-7.602-12)

52.236-7 Permits and Responsibilities.

As prescribed in 36.507, insert the following clause:

PERMITS AND RESPONSIBILITIES (APR 1984)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

(R 7-602.13 1974 JUN)

(R 1-7.602.13)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48995, Nov. 28, 1989]

52.236-8 Other Contracts.

As prescribed in 36.508, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

(R 7-602.15 1964 JUN)

(R 1-7.602.15)

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

(R 7-602.34 1965 JAN)

(7-2101.13 1976 OCT)

52.236-10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

(R 7-602.35 1965 JAN)

52.236-11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitation. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitation.

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled *Permits and Responsibilities*. If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

(R 7-602.39 1976 OCT)

(1-7.602.31)

52.236-12 Cleaning Up.

As prescribed in 36.512, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)

(R 7-602.40 1965 JAN)

(R 7-2101.21 1976 OCT)

52.236-13 Accident Prevention.

As prescribed in 36.513, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

ACCIDENT PREVENTION (APR 1984)

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be

reasonably necessary for this purpose are taken.

(b) If this contract is with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, dated October 1987.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(End of clause)

(R 7-602.42(a) 1977 JUN)

Alternate I (APR 1984). If the contract will involve work of a long duration or hazardous nature, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposal for implementing this clause; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(R 7-602.42(b) 1977 JUN)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 43395, Oct. 26, 1988; 55 FR 38518, Sept. 18, 1990]

52.236-14 Availability and Use of Utility Services.

As prescribed in 36.514, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites when the contracting officer decides (a) that the existing utility system is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

(R 7-603.30 1967 APR)

(R 7-2102.4 1976 OCT)

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may be inserted in such contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants impositions of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

(R 7-603.48 1965 JAN)

52.236-16 Quantity Surveys.

As prescribed in 36.516, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated:

QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

(R 7-603.50(a) 1979 MAR)

Alternate I (APR 1984). If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(R 7-603.50(b) 1979 MAR)

52.236-17 Layout of Work.

As prescribed in 36.517, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance:

LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

(R 7-604.3 1965 JAN)

52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.

As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

(V 7-607.15 1965 JAN)

(R 7-605.16 1965 JAN)

52.236-19 Organization and Direction of the Work.

As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of: (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)

(R 7-605.7 1977 DEC)

(R 7-605.25 1965 JAN)

52.236-20 [Reserved]

52.236-21 Specifications and Drawings for Construction.

As prescribed in 36.520, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words *directed, required, ordered, designated, prescribed,* or words of like import are used, it shall be understood that the *direction, requirement, order, designation,* or *prescription,* of the Contracting Officer is intended and similarly the words *approved, acceptable, satisfactory,* or words of like import shall mean *approved by,* or *acceptable to,* or *satisfactory to* the Contracting Officer, unless otherwise expressly stated.

(c) Where *as shown, as indicated, as detailed,* or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word *provided* as used herein shall be understood to mean *provide complete in place,* that is *furnished and installed.*

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(h) This clause shall be included in all subcontracts at any tier.

(End of clause)

(7-602.2 JUNE 1964 and 1-7.602-2)

(7-602.41 JAN 1965)

(7-602.47 APR 1966)

(7-602.54 OCT 1976 and 1-7.602-36)

Alternate I (APR 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:

> Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(7-602.54(b)(1), OCT 1976)

Alternate II (APR 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish —— [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

(7-602.54(b)(2) OCT 1976)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.236-22 Design Within Funding Limitations.

As prescribed in 36.609-1(c), insert the following clause:

DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) below. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is $————.

(End of clause)

(R 7-608.3(a) and (b) 1971 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985]

52.236-23 Responsibility of the Architect-Engineer Contractor.

As prescribed in 36.609-2(b), insert the following clause:

RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

(R 7-607.2 1972 APR)

(V 7-607.20 1972 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985]

52.236-24 Work Oversight in Architect-Engineer Contracts.

As prescribed in 36.609-3, insert the following clause:

WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

(R 7-607.15 1965 JAN)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985]

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause in fixed-price architect-engineer contracts, except that it may be omitted when the design is to be performed (a) outside the United States, its possessions, and Puerto Rico or (b) in a State or possession that does not have registration requirements for the particular field involved.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

(R 7-608.6 1972 APR)

52.237-1 Site Visit.

As prescribed in 37.110(a), insert the following provision in solicitations for services to be performed on Government installations, unless the solicitation is for construction:

SITE VISIT (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)

(R 7-2003.39 1969 OCT)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.110(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

(R 7-104.63 1968 FEB)

52.237-3 Continuity of Services.

As prescribed in 37.110(c), the following clause may be included in solicitations and contracts for services when the Government anticipates difficulties during the transition from one contractor to another or to the Government. The 60-day period in paragraph (b) may be varied from 30 to 90 days.

CONTINUITY OF SERVICES (APR 1984)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 60 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

(R 7-1910.3 JUL 1976)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.304(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR (APR 1984)

(a) In ——— [insert *full* if Alternate I is used; otherwise insert *partial*] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor ——— [fill in amount].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) below, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

(R 7-2101.3(a) 1976 OCT)

Alternate I (APR 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

(R 7-2101.3(a) OCT 1976)

52.237-5 Payment by Contractor to Government.

As prescribed in 37.304(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within ——— days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay ——— [fill in amount]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)

(R 7-2101.3(b) 1976 OCT)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.304(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (b) if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property, only upon receipt of those payments:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within ——— days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay ——— [fill in amount]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

(R 7-2101.3(b) 1976 OCT)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (SEP 1989)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to idemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: ________.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

[54 FR 5058, Jan. 31, 1989, as amended at 54 FR 34758, Aug. 21, 1989]

52.237-8 Severance payments to foreign nationals employed under a service contract performed outside the United States.

As prescribed in 37.110(f), insert the following clause:

SEVERANCE PAYMENTS TO FOREIGN NATIONALS EMPLOYED UNDER A SERVICE CONTRACT PERFORMED OUTSIDE THE UNITED STATES (MAR 1989)

(a) This clause applies to all pricing actions subject to part 31 of the FAR.

(b) Notwithstanding the reference to geographical area in FAR 31.205-6(b)(1), severance payments to foreign nationals employed under a service contract or subcontract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(End of clause)

[54 FR 13025, Mar. 29, 1989]

52.237-9 [Reserved]

52.238—52.241 [Reserved]

52.242-1 Notice of Intent to Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

(R 7-203.35 1978 AUG)

52.242-2 Production Progress Reports.

As prescribed in 42.1107(a), insert the following clause in solicitations and contracts when production progress reporting is required; unless a facilities contract, a construction contract, or a Federal Supply Schedule contract is contemplated.

PRODUCTION PROGRESS REPORTS (APR 1984)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding $10,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)

(R 7-104.51 1971 APR)

52.242-3—52.242-9 [Reserved]

52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

As prescribed in 42.1404-2(a), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or prepaid postage:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system, as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs shall be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by Contractors is not authorized. Quantities shall not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

(R 7-104.85(a) 1977 DEC)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

F.O.B.—GOVERNMENT BILLS OF LADING OR INDICIA MAIL (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using *Postage and Fees Paid* indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) pos office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

(R 7-104.85(b) 1973 APR)

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (DEC 1989)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii respectively) destination (other than a port for export). The notice shall be transmitted by rapid means (electrical if necessary) to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. When the length of time in transit will permit other than electrical means of transmission to provide the information 24 hours before the arrival of the shipment, the Government bill of lading, commercial bill of lading, or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer via United States mail. This document shall be prominently identified by the Contractor as being a *Report of Shipment* or *REPSHIP FOR T.O.*

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA —— ETA*****-JUNE 5 JONES & CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48995, Nov. 28, 1989]

52.243-1 Changes—Fixed-Price.

As described in 43.205(a)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(2) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(R 7-1902.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(R 7-1902.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

(R 7-607.3 1972 APR)

Alternate IV (APR 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Specifications.

(2) Work or services.

(3) Place of origin.

(4) Place of delivery.

(5) Tonnage to be shipped.

(6) Amount of Government-furnished property.

(R 1-7.703-2)

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a) (1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

(1) Drawings, designs, or specifications.

(3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

(R 7-304.1 1965 JUN)

(R 1-7.304-1)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30079, Aug. 12, 1987; 54 FR 48995, Nov. 28, 1989]

52.243-2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—COST-REIMBURSEMENT (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

Alternate I (APR 1984). If the requirement is for services and no supplies are to be furnished, substitute he following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any ime, by written order, and without notice o the sureties, if any, make changes within he general scope of this contract in any one r more of the following:

(1) Description of services to be per- rmed.

(2) Time of performance (i.e., hours of the y, days of the week, etc.).

(3) Place of performance of the services.

(R 7-1909.2 1971 NOV)

Alternate II (APR 1984). If the re- irement is for services and supplies e to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(R 7-1909.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for construction, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.

(R 7-605.2 1967 APR)

Alternate IV (APR 1984). If a facilities contract is contemplated, substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the facilities or work described in the schedule.

(e) Any related contract with the Contractor may be equitably adjusted if it provides for adjustment and is affected by a change ordered under this clause.

(R 7-702.4 1964 SEP)

Alternate V (APR 1984). If the requirement is for research and development, and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) for subparagraphs (a)(1) and (a)(3) of the basic clause:

(1) Drawings, designs, or specifications.

(3) Place of inspection, delivery, or acceptance.

(R 7-404.1 1967 APR)

(R 1-7.404-5)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30079, Aug. 12, 1987]

52.243-3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery

(4) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms, and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30079, Aug. 12, 1987]

52.243-4 Changes.

As prescribed in 43.205(d), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; *provided*, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if a serted after final payment under this contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 30079, Aug. 12, 1987]

52.243-5 Changes and Changed Conditions.

As prescribed in 43.205(e), insert the following clause in solicitations and contracts for construction, when the contract amount is not expected to exceed the applicable small purchase limitation in part 13:

CHANGES AND CHANGED CONDITIONS (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a *proposal for adjustment* (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—

(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

(2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(End of clause)

(R SF-19)

52.243-6 Change Order Accounting.

As prescribed in 43.205(f), the contracting officer may insert a clause, substantially the same as follows, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated.

CHANGE ORDER ACCOUNTING (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of clause)

(AV 7-104.90)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 29297, July 11, 1989]

52.243-7 Notification of Changes.

As prescribed in 43.107, the contracting officer may insert a clause substantially the same as the following in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

NOTIFICATION OF CHANGES (APR 1984)

(a) *Definitions. Contracting Officer*, as used in this clause, does not include any representative of the Contracting Officer. *Specifically Authorized Representative (SAR)*, as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice*. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within —— (*to be negotiated*) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; *provided*, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within —— (*to be negotiated*) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

NOTE: The phrases *contract price* and *cost* wherever they appear in the clause, may be appropriately modified to apply to cost-re imbursement or incentive contracts, or to combinations thereof.

(End of clause)

(AV 7-104.86)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 25534, June 21, 1990; 55 FR 38518, Sept. 18, 1990]

52.244-1 Subcontracts Fixed-Price Contracts.

As prescribed in 44.204(a)(1)(i), insert the following clause. The threshold in subparagraphs (b)(2) and (b)(3) of the clause may be lowered when closer surveillance of subcontracting is necessary because of the nature of the industry involved, criticality of the work expected to be subcontracted, absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or novelty of the supplies or services being purchased.

SUBCONTRACTS (FIXED-PRICE CONTRACTS) (JAN 1986)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) *Subcontract*, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

(1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed $25,000 including any fee;

(2) Is proposed to exceed $100,000; or

(3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include—

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant considerations controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of this contract.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in section 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(End of clause)

Alternate I (APR 1984). If the Contracting Officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations (this election is not authorized for acquisition of major systems and subsystems or their components), add the following paragraph (i) to the basic clause:

(i) Paragraphs (b) and (c) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [*list subcontracts*]

(R 23-201.1(b)(ii) 1977 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 4, 1985; 51 FR 2667, Jan. 17, 1986; 51 FR 36972, Oct. 16, 1986]

52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts.)

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS) (JUL 1985)

(a) *Subcontract*, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $10,000 or of any items of facilities.

(b) (1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $10,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2) (i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) above without the consent of the Contracting Officer, unless this contract is for the acquisition of major systems, subsystems, or their components.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that have been selected for special surveillance and identified in the Schedule of this contract.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this contract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i)(1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph *Quarterly limitation on payments statement* of the clause at 52.216-5, Price Redetermination—Prospective, 52.216-6, Price Redetermination—Retroactive, 52.216-16, Incentive Price Revision—Firm Target, or 52.216-17, Incentive Price Revision—Successive Targets, as appropriate, modified in accordance with the paragraph entitled *Subcontracts* of that clause.

(2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

(j) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

(k) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(End of clause)

Alternate I (APR 1985). If the contracting office is in DOD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:

(a)(2) The proposed subcontract is fixed-price and exceeds the greater of (i) the small purchase limitation in part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 23607, June 4, 1985; 50 FR 26904, June 28, 1985; 50 FR 52429, Dec. 23, 1985]

52.244-3 Subcontracts (Time-and-Materials and Labor-Hour Contracts.)

As prescribed in 44.204(c), insert the following clause:

SUBCONTRACTS (TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS) (APR 1985)

(a) *Subcontract*, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.

(b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).

(c) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(d) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 4, 1985]

52.244-4 Subcontractors and Outside Associates and Consultants.

As prescribed in 44.204(d), insert the following clause in fixed-price architect-engineer contracts:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (APR 1984)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

(SS 7-607.16 1965 JAN)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(e), when contracting by negotiation, insert the following clause in solicitations and contracts when the contract amount is expected to exceed the appropriate small purchase limitation in part 13, unless—

(a) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(b) A contract of the type and/or purpose identified in 44.204(c) and (d) is contemplated.

COMPETITION IN SUBCONTRACTING (APR 1985)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

(V 7-104.40 1962 APR)

(V 1-7.202-30)

(V 7-303.27)

(V 7-402.29)

(V 7-603.18)

(V 7-605.37)

(V 7-702.50)

(V 7-703.43)

(V 7-704.35)

(V 7-1703.5)

(V 7-1903.28)

(V 7-1909.23)

52.245-1 Property Records.

As prescribed in 45.106(a), insert the following clause in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records:

PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

(AV 7-104.24(g) 1967 AUG)

52.245-2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause:

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as *Government-furnished property*).

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished *as-is*) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as *Government property*), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon—

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for

which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Co tractor's premises.* Unless otherwise provid ed herein, the Government—

(1) May abandon any Government proper ty in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or reha bilitate the Contractor's premises under any circumstances (e.g., abandonment, dispos tion upon completion of need, or upon con tract completion). However, if the Govern ment-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted then the equitable adjustment under para graph (h) of this clause may properly in clude restoration or rehabilitation costs.

(k) *Communications.* All communication under this clause shall be in writing.

(l) *Overseas contracts.* If this contract to be performed outside of the Unite States of America, its territories, or posse sions, the words *Government* and *Govern ment-furnished* (wherever they appear this clause) shall be construed as *Unite States Government* and *United States Gov ernment-furnished*, respectively.

(End of clause)

Alternate I (APR 1984). As pr scribed in 45.106(b)(2), substitute the following paragraph (g) for paragrap (g) of the basic clause:

(g) *Limited risk of loss.* (1) The term *Co tractor's managerial personnel*, as used this paragraph (g), means the Contractor directors, officers, and any of the Contra tor's managers, superintendents, or equiv lent representatives who have supervision direction of—

(i) All or substantially all of the Contra tor's business;

(ii) All or substantially all of the Contra tor's operation at any one plant or separa location at which the contract is being pe formed; or

(iii) A separate and complete major indu trial operation connected with performi this contract.

(2) The Contractor shall not be liable f loss or destruction of, or damage to, th Government property provided under th contract (or, if an educational or nonpro organization, for expenses incidental such loss, destruction, or damage), except provided in subparagraphs (3) and below.

(3) The Contractor shall be responsib for loss or destruction of, or damage to, th Government property provided under th contract (including expenses incidental such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Contractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self- insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(R 7-104.24(c) 1978 SEP)

(R 1-7.303-7(b))

Alternate II (JUL 1985). As prescribed in 45.106(b)(3), substitute the following paragraphs (c) and (g) for paragraphs (c) and (g) of the basic clause:

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as *Government property*), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences, or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; *provided*, that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of $5,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this subparagraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this subparagraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

(g) *Limited risk of loss.* (1) The term *Contractor's managerial personnel*, as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, laboratory, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.

(3) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Contractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Contractor represents that it is not including in the price, and agrees it will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, the Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit

the proceeds to or equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 54 FR 48995, Nov. 28, 1989]

52.245-3 Identification of Government-Furnished Property.

As prescribed in 45.106(c), insert the following clause, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) The Government will furnish to the Contractor the property identified in the Schedule to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the contract Schedule or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor shall also report in writing to the Contracting Officer within 24 hours of delivery any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

(b) Each item of property to be furnished under this clause shall be identified in the Schedule by quantity, item, and description.

(End of clause)

(R 7-603.28 1968 SEP)

52.245-4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when—

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall [illegible] the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except—

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or as thorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words *Government* and *Government-furnished* (wherever they appear in this clause) shall be construed as *United States Government* and *United States Government-furnished*, respectively.

(End of clause)

(R 7-104.24(f) 1964 NOV)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 663, Jan. 11, 1988]

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

As prescribed in 45.106(f)(1), insert the following clause:

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986)

(a) *Government-furnished property.* (1) The term *Contractor's managerial personnel*, as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as *Government-furnished property*).

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as *Government property*), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property*. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration*. (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access*. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss*. (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify

the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; *provided*, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the

Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside the United States of America, its territories, or possessions, the words *Government* and *Government-furnished* (wherever they appear in this clause) shall be construed as *United States Government* and *United States Government-furnished,* respectively.

(End of clause)

Alternate I (JUL 1985). As prescribed in 45.106(f)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as *Government property*), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon the vendor's delivery of such property. Title to all other property, the cost of which is to be reimbursed to the Contractor under this contract and that under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or its use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; *provided,* that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of $5,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this subparagraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this subparagraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985; 51 FR 2667, Jan. 17, 1986; 55 FR 3889, Feb. 5, 1990]

52.245-6 Liability for Government Property (Demolition Services Contracts).

As prescribed in 45.106(g) insert the following clause, in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements:

LIABILITY FOR GOVERNMENT PROPERTY (DEMOLITION SERVICES CONTRACTS) (APR 1984)

Except for reasonable wear and tear incident to removal and delivery to the Government, the Contractor assumes the risk of and shall be responsible for any loss or destruction of, or damage to, items of property, title to which—

(a) Remains in the Government and that are to be delivered to the Government by the Contractor in performing the work; and

(b) Is vested in the Contractor but that under the Termination clauses of this contract is revested in the Government upon notice of termination.

(End of clause)

(R 7-2101.16 1976 OCT)

52.245-7 Government Property (Consolidated Facilities).

As prescribed in 45.302-6(a), insert the following clause in solicitations and contracts when a consolidated facilities contract is contemplated:

GOVERNMENT PROPERTY (CONSOLIDATED FACILITIES) (APR 1984)

(a) *Definitions.* For the purpose of this contract, the following definitions apply:

Facilities, as used in this clause, means all property provided under this facilities contract.

Related contract, as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those facilities as is described in the Schedule.

(3) All shipments of the facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

(c) *Period of this contract.* If not otherwise specified in the contract and if not previously terminated under paragraph (m), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(d) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to replacement parts furnished by the Contractor in carrying out its normal maintenance obligations under paragraph (h) shall pass to and vest in the Government upon completion of their installation in the facilities.

(4) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(5) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(6) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(7) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the

nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(e) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(f) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(g) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities, in accordance with the provisions of Federal Acquisition Regulation (FAR) subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(h) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, and repair of the facilities and normal parts replacement for equipment.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show its adequacy. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (h)(1) and (h)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under subparagraphs (h)(1) through (h)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect these records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if the Contracting Officer directs, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of; until the expiration of the 120-day period stated in subparagraph (n)(4) of this clause; and until the Contractor has discharged its other obligations under this contract with respect to such items.

(i) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-6, Insurance—Liability to Third Persons, or at FAR 52.228-7, Liability to Third Persons—Total Immunity. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(k) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost

of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by any nondelivery, delay, diversion, or substitution under this paragraph (k).

(l) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(m) *Termination of the use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (m) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(n) *Disposition of the facilities.* (1) The provisions of this paragraph (n) shall apply to facilities for which use has been terminated by either the Contracting Officer or the Contractor under paragraph (m), except as provided in subparagraph (n)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph shall not apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (m), or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in a form satisfactory to the Contracting Officer, an accounting for all the facilities covered by the notice.

(4) Within 120 days after the Contractor accounts for any facilities under subparagraph (n)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in subparagraph (n)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the restoration or rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; *provided*, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by subparagraph (n)(4) within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification. Except as provided in this subparagraph, the Government shall not be liable to the Contractor for failure to give the written notice required by subparagraph (n)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which

the Contractor's authority to use has been terminated, other than those for which specific provision is made in subparagraph (n)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in subparagraph (n)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring that Government property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (n)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(End of clause)

(R 7-702.1 1964 SEP)

(R 7-702.2 1964 SEP)

(R 7-702.25 1964 SEP)

(R 7-702.15 1964 SEP)

(R 7-705.7 1964 SEP)

(R 7-702.8 1964 SEP)

(AV 7-702.23 1968 JUN)

(R 7-702.17 1969 APR)

(R 7-702.14 1964 SEP)

(AV 7-702.16 1964 SEP)

(R 7-702.20 1964 SEP)

(R 7-702.3 1964 SEP)

(R 7-702.5 1964 SEP)

(AV 7-702.24 1964 SEP)

(R 7-702.26 1968 APR)

52.245-8 Liability for the Facilities.

As prescribed in 45.302-6(b), insert the following clause in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated.

LIABILITY FOR THE FACILITIES (APR 1984)

(a) The term *Contractor's managerial personnel,* as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which the facilities are installed or located; or

(3) A separate and complete major industrial operation in connection with which the facilities are used.

(b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities, or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

(c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage—

(1) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(2) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(3) For which the Contractor is otherwise responsible under the express terms of this contract;

(4) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(5) That results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel—

(i) To establish, maintain, and administer a system for control of the facilities in accordance with the *Property administration* paragraph of the Government Property clause; or

(ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with the *Property administration* paragraph of the Government Property clause, or to take reasonable steps to comply with any appropriate written direction that the Contracting Officer may prescribe as reasonably necessary for the protection of the facilities. If the Government Property clause does not include the *Property administration* paragraph, then the Contractor shall exercise sound industrial practice in complying with the requirements of this subdivision (c)(5)(ii).

(d) (1) If the Contractor fails to act as provided by subparagraph (c)(5) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(2) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(i) Did not result from the Contractor's failure to maintain an approved program or system; or

(ii) Occurred while an approved program or system was maintained by the Contractor.

(e) If the Contractor transfers facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the facilities. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

(f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer a certificate of insurance or a certified copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer.

(g) When there is any loss or destruction of, or damage to, the facilities—

(1) The Contractor shall promptly notify the Contracting Officer and, with the assistance of the Contracting Officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within 30 days) a statement of—

(i) The facilities lost or damaged;

(ii) The time and origin of the loss or damage;

(iii) All known interests in commingled property of which the facilities are a part; and

(iv) Any insurance covering any part of or interest in such commingled property;

(2) The Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged facilities, or take such other action as the Contracting Officer may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Government expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(h) The Government is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If the Government does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition of the related contracts affected shall be governed by the terms and conditions of those contracts.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to the Government or otherwise disposed of under the terms of this contract (1) in as good condition as when received by the Contractor, (2) improved, or (3) as required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by the Contracting Officer, shall—

(1) Use the proceeds to repair, renovate, or replace the facilities involved; or

(2) Pay such proceeds to the Government.

(k) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

(R 7-702.18 1976 OCT)

52.245-9 Use and Charges.

As prescribed in 45.302-6(c), insert the following clause in solicitations and contracts (1) when a consolidated facilities contract or a facilities use contract or (2) when a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis. If the conditions specified in 45.403(a) apply, the contracting officer shall modify the clause, as appropriate.

USE AND CHARGES (APR 1984)

(a) The Contractor may use the facilities without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract (i) approves a subcontract specifically authorizing such use or (ii) otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(b) If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the facilities for a rental fee for work other than that provided in paragraph (a). Authorizing such use of the facilities does not waive any rights of the Government to terminate the Contractor's right to use the facilities. The rental fee shall be determined in accordance with the following paragraphs.

(c) The following bases are or shall be established in writing for the rental computation prescribed in paragraphs (d) and (e) below in advance of any use of the facilities on a rental basis:

(1) The rental rates shall be those set forth in Table I.

(2) The acquisition cost of the facilities shall be the total cost to the Government, as determined by the Contracting Officer, and includes the cost of transportation and installation, if borne by the Government.

(i) When Government-owned special tooling or accessories are rented with any of the facilities, the acquisition cost of the facilities shall be increased by the total cost to the Government of such tooling or accessories, as determined by the Contracting Officer.

(ii) When any of the facilities are substantially improved at Government expense, the acquisition cost of the facilities shall be increased by the increase in value that the improvement represents, as determined by the Contracting Officer.

(iii) The determinations of the Contracting Officer under this subparagraph (c)(2) shall be final.

(3) For the purpose of determining the amount of rental due under paragraph (d), the rental period shall be not less than [illegible] month nor more than 6 months, as approved by the Contracting Officer.

(4) For the purpose of computing any credit under paragraph (e), the unit in determining the amount of use of the facilities shall be direct labor hours, sales, hours of use, or any other unit of measure that will result in an equitable apportionment of the rental charge, as approved by the Contracting Officer.

(d) The Contractor shall compute the amount of rentals to be paid for each rental period by applying the appropriate rental rates to the acquisition cost of such facilities as may have been authorized for use in advance for the rental period.

(e) The full rental charge for each period shall be reduced by a credit. The credit equals the rental amount that would otherwise be properly allocable to the work for which the facilities were used without charge under paragraph (a). The credit shall be computed by multiplying the full rental for the rental period by a fraction in which the numerator is the amount of use of the facilities by the Contractor without charge during the period, and the denominator is the total amount of use of the facilities by the Contractor during the period.

(f) Within 90 days after the close of each rental period, the Contractor shall submit to the Contracting Officer a written statement of the use made of the facilities by the Contractor and the rental due the Government. At the same time, the Contractor shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(g) If the Contractor fails to submit the information as required in paragraph (f) above, the Contractor shall be liable for the full rental for the period. However, if the Contractor's failure to submit was not the fault of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time to submit.

(h) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the facilities to performing contracts and subcontracts of the Contracting Officer having cognizance of the facilities and shall not undertake any work involving the use of the facilities that would interfere with performing existing Government contracts or subcontracts.

(i) Concurrently with the submission of the written statement prescribed by paragraph (f) of this clause, the Contractor shall pay the rental due the Government under this clause. Payment shall be by check made payable to the office designated for contract administration and mailed or delivered to the Contracting Officer. Receipt and acceptance by the Government of the Contractor's check pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within 180 days following receipt that the amount received is not regarded by the Government as the final amount due.

(j) If the Contractor uses any item of the facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part of a month in which such unauthorized use occurs; *provided*, however, that the agency head concerned may, in writing, waive the Contractor's liability for such unauthorized use if the agency head determines that without such a waiver gross inequity would result. The acceptance of any rental by the Government under this clause shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the facilities or any other failure to perform this contract according to its terms.

TABLE I

Rental Rates

(i) For real property and associated fixtures, a fair and reasonable rental shall be established, based on sound commercial practice.

(ii) For plant equipment of the types covered in Federal Supply classes 3405, 3408, 3410, and 3411 through 3419, machine tools; and in 3441 through 3449, secondary metal forming and cutting machines, the following monthly rates shall apply:

Age of Equipment	Monthly Rental Rate
Under 2 years old	3.0 percent
Over 2 to 3 years old	2.0 percent
Over 3 to 6 years old	1.5 percent
Over 6 to 10 years old	1.0 percent
Over 10 years old	0.75 percent

The age of each item of the equipment shall be based on the year in which it was manufactured, with a birthday on January 1 of each year thereafter. For example, an item of equipment manufactured on July 15, 1978, will be considered to be *over 1 year old* on and after January 1, 1979, and *over 2 years old* on and after January 1, 1980.

(iii) For personal property and equipment not covered in (i) or (ii) above, a rental shall be established at not less than the prevailing commercial rate, if any, or, in the absence of such rate, not less than 2 percent per month for electronic test equipment and automotive equipment and not less than 1 percent per month for all other property and equipment.

(End of clause)

(R 7-702.12 1976 OCT)

52.245-10 Government Property (Facilities Acquisition).

As prescribed in 45.302-6(d), insert the following clause in solicitations and contracts when a facilities acquisition contract is contemplated:

GOVERNMENT PROPERTY (FACILITIES ACQUISITION) (APR 1984)

(a) *Definitions.*

Facilities, as used in this clause, means all property provided under this facilities contract.

Related contract, as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those Government-furnished facilities as is described in the Schedule.

(c) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to the facilities shall not be affected by their incorporation into, or attachment to, any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(5) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(6) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities in accordance with the provisions of Federal Acquisition Regulation (FAR) subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(e) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-6, Insurance— Liability to Third Persons, or at FAR 52.228-7, Liability to Third Persons—Total Immunity. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under such related contracts.

(g) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by nondelivery, delay, diversion, or substitution under this paragraph (g).

(h) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify

the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(l) *Supersedure.* Upon the acquisition, construction, or installation of the facilities called for by this contract, or any usable increment of the facilities, and acceptance by the Government, the facilities shall then be subject to the provisions of the facilities contract that authorizes the use of the items.

(End of clause)

(R 7-702.1 1964 SEP)

(AV 7-702.2 1964 SEP)

(R 7-702.15 1964 SEP)

(R 7-705.7 1964 SEP)

(R 7-702.17 1969 APR)

(AV 7-702.16 1964 SEP)

(R 7-702.20 1964 SEP)

(R 7-702.3 1964 SEP)

(R 7-702.5 1964 SEP)

(AV 7-703.39 1964 SEP)

52.245-11 Government Property (Facilities Use).

As prescribed in 45.302-6(e)(1), insert the following clause:

GOVERNMENT PROPERTY
(FACILITIES USE) (APR 1984)

(a) *Definitions. Facilities,* as used in this clause, means property provided under this facilities contract.

Related contract, as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Period of this contract.* If not otherwise specified in this contract and if not previously terminated under paragraph (k), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(c) *Title in the facilities.* (1) Title to the facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(2) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(f) *Property control.* The Contractor shall maintain property control procedures and records, and a system of identification of the facilities, in accordance with the provisions of Federal Acquisition Regulation (FAR) subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the facilities in accordance with sound industrial practice.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (g)(1) and (g)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under subparagraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect such records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of at the expiration of the 120-day period stated in subparagraph (l)(4) of this clause and when the Contractor has discharged its other obligations under this contract with respect to such items.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities under this contract. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(j) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(k) *Termination of use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (k) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph (l) shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor under paragraph (k), except as provided in subparagraph (l)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph (l) shall not apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (k) or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer an accounting for all the facilities covered by such notice. The submission of the Contractor shall be in a form satisfactory to the Contracting Officer.

(4) Within 120 days after the Contractor accounts for any facilities under subparagraph (l)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in subparagraph (l)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; *provided*, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not e required to extend credit to any purchas- r.

(5) If the Contracting Officer fails to give he written notice required by subpararaph (l)(4) of this clause within the preribed 120-day period, the Contractor may, pon not less than 30 days' written notice to e Government, and at Government risk d expense, (i) retain the facilities in place (ii) remove any of the affected severable cilities located in Contractor-owned propy and store them at the Contractor's plant or in a public insured warehouse. Such removal and storage shall be in accordance with sound practice and in a manner compatible with the security classification of the facilities. Except as provided in this subparagraph (l)(5), the Government shall not be liable to the Contractor for failure to give the written notice required by subparagraph (l)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in subparagraph (l)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in subparagraph (l)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring such Government property, to the extent that it is affected by the installation of the Contractor's property, to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (l)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(m) *Supersedure.* (1) Facilities previously provided to the Contractor under the contracts specified in the Schedule of this contract shall become subject to this contract upon its effective date. The terms of those contracts by which such facilities were previously provided to the Contractor are hereby superseded with respect to such facilities, except for rights and obligations that may have accrued under such other contract before the effective date of this contract.

(2) Facilities subsequently provided the Contractor under any contract shall, if that contract so specifies, be subject to this contract upon the completion of their construction, acquisition, and installation or upon their availability for use, whichever occurs first, except as otherwise provided in the

contract or other document by which such facilities are provided to the Contractor.

(End of clause)

(R 7-702.1 1964 SEP)

(R 7-702.25 1964 SEP)

(R 7-702.15 1964 SEP)

(R 7-705.7 1964 SEP)

(R 7-702.23 1968 SEP)

(R 7-702.17 1969 APR)

(R 7-702.14 1964 SEP)

(AV 7-702.16 1964 SEP)

(R 7-702.20 1964 SEP)

(R 7-704.15 1964 SEP)

(R 7-702.3 1964 SEP)

(R 7-702.5 1964 SEP)

(R 7-706.7 1968 SEP)

(R 7-706.15 1968 SEP)

(AV 7-702.24 1964 SEP)

(R 7-702.26 1968 APR)

(R 7-704.31 1964 SEP)

Alternate I (July 1985). As prescribed in 45.302-6(e)(2), substitute the following paragraph (c) of the basic clause:

(c) *Title.* (1) Title to equipment (and other tangible personal property) having a unit acquisition cost of less than $5,000, purchased with funds available for research, shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor received the Contracting Officer's approval before acquiring the equipment. Title to other equipment purchased with Government funds shall vest in the Government. The Government may at any time during the term of this contract or upon its completion or termination transfer to the Contractor the title to any equipment purchased with funds available for research. Any such transfer shall be upon terms and conditions agreed to by the parties. The Contractor agrees that it shall not charge under any Government contract or subcontract any depreciation, amortization, or use of the equipment purchased or transferred under this paragraph. When title to equipment is vested in the Contractor or is transferred under this paragraph to the Contractor, the equipment ceases to be Government property. Within 10 days after the end of the calendar quarter in which such acquisition or transfer of title occurs, the Contractor shall furnish the Contracting Officer a list of all equipment, title to which is vested in the Contractor.

(2) (i) The Government shall retain title to all Government-furnished property.

(ii) Except as set forth in subparagraph (c)(1), title to all property shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this or a related contract.

(iii) Title to replacement parts furnished by the Contractor in performing its normal obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(iv) Title to other property, the cost of which is reimbursable to the contractor under this contract or a related contract, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in performing this contract;

(B) Commencement of processing or use of the property in performing this contract; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(3) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(4) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(5) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The

term does not include foundations for production equipment.

(6) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26904, June 28, 1985]

52.245-12 Contract Purpose (Nonprofit Educational Institutions).

As prescribed in 45.302-7(a), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

CONTRACT PURPOSE (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

This facilities use contract is designed specifically for nonprofit educational institutions to set forth provisions for the use and accountability of facilities furnished or acquired under related contracts identified elsewhere herein. There are no funds provided under this contract. Costs incurred for acquisition, maintenance, repair, replacement, disposition, or other purposes in connection with the facilities accountable hereunder will be subject to the reimbursement provisions of the related contracts; *provided*, however, that should no other contract be available for reimbursement of such costs, this contract may be appropriately modified to provide for such reimbursement.

(End of clause)

(AV 7-706.1 1968 SEP)

52.245-13 Accountable Facilities (Nonprofit Educational Institutions).

As prescribed in 45.302-7(b), the contracting officer may insert the following clause in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution:

ACCOUNTABLE FACILITIES (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

The facilities accountable under this contract are those facilities furnished or acquired under this contract and those facilities furnished or acquired under those related contracts that are specifically identified in this contract Schedule.

(End of clause)

(R 7-706.2 1968 SEP)

52.245-14 Use of Government Facilities.

As prescribed in 45.302-7(c), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

USE OF GOVERNMENT FACILITIES (APR 1984)

The Contractor may use the facilities without charge in performing—

(a) Contracts with the Government which specifically authorize such use without charge;

(b) Subcontracts of any tier if the Contracting Officer having cognizance of the prime contract has authorized, in writing, use without charge; and

(c) Other work for which the Contracting Officer has specifically authorized use without charge in writing.

(End of clause)

(R 7-706.4 1968 SEP)

52.245-15 Transfer of Title to the Facilities.

As prescribed in 45.302-7(d), insert the following clause:

TRANSFER OF TITLE TO THE FACILITIES (JUL 1985)

(a) The Contracting Officer may, at any time during the term of this contract and acting under Public Law 97-258 (31 U.S.C. 6306), transfer title to equipment to the Contractor upon mutually agreeable terms and conditions. This clause takes precedence over the title paragraph of the Government property clause of this contract. However, every agreement to transfer title to equipment shall provide that the Contractor will not include in the contract price or charge the Government in any manner for depreciation, amortization, or use of such equipment.

(b) Vesting title under paragraph (a) above is subject to civil rights legislation, 42

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U.S.C. 2000d. Before title is vested and by signing this contract, the contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26905, June 28, 1985]

52.245-16 Facilities Equipment Modernization.

As prescribed in 45.302-7(e), insert the following clause:

FACILITIES EQUIPMENT MODERNIZATION (APR 1985)

(a) The Contractor agrees to return to the Government the net cost savings realized from using modernized or replacement equipment provided by the Government under this contract. This applies to using such equipment on any contracts or subcontracts that are firm-fixed price, or that are fixed-price with economic price adjustment provisions, entered into within the 3 years following the date such equipment is placed into production. This provision does not apply to the use of such equipment in sealed bid contracts entered into after the equipment is placed in production or in contracts or subcontracts that specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for implementing this clause. The Contractor shall make such records available at its office for inspection, audit, or reproduction by any authorized representative of the Contracting Officer.

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, the subcontractor shall be required to maintain records and make them and additional information available to the Contracting Officer.

(c) Records of equipment shall generally be acceptable if they are maintained under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Contracting Officer, by—

(1) Credits to, or adjustment of the prices of, the related contracts benefitting from using the modernized or replacement equipment;

(2) Payment to the Government through the Contracting Officer having cognizance of the equipment; or

(3) Any other means mutually agreed to.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52434, Dec. 23, 1985]

52.245-17 Special Tooling.

As prescribed in 45.306-5, insert the following clause:

SPECIAL TOOLING (DEC 1989)

(a) *Definition. Special tooling* means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling for the purpose of this clause, includes all special tooling acquired or fabricated by the Contractor for the Government (other than special tooling to be delivered as a line item) or furnished by the Government for use in connection with and under the terms of the contract.

(b) *Title.* The Government retains title to Government-owned special tooling and option to take title to all special tooling subject to this clause until such time as title or option to take title is relinquished by the Contracting Officer as provided for in subparagraphs (j)(2) and (j)(3) of this clause.

(c) *Risk of loss.* Except to the extent that the Government shall have otherwise assumed the risk of loss to special tooling applicable to this clause, in the event of the loss, theft or destruction of or damage to any such property, the repair or replacement shall be accomplished by the Contractor at its own expense.

(d) *Special tooling furnished by the Government.* (1) Except as otherwise provided in this contract, all Government-furnished special tooling is provided *as is.* The Government makes no warranty whatsoever with respect to special tooling furnished *as is,* except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when last available for inspection by the Contractor under the solicitation.

(2) The Contractor may repair any special tooling made available on an *as is* basis. Such repair will be at the Contractor's expense, except as otherwise provided in this clause. Such property may be modified as necessary for use under this contract at the Contractor's expense, except as otherwise directed by the Contracting Officer. Any repair or modification of property furnished *as is* shall not affect the title of the Government.

(3) If there is any change in the condition of special tooling furnished *as is* from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation or the Government directs a change in the quantity of special tooling furnished or to be furnished, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts, and, as directed by the Contracting Officer, either (i) return such items at the Government's expense or otherwise dispose of the property or (ii) effect repair to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of special tooling in a condition or in quantities other than that when originally offered.

(e) *Use of special tooling.* The Contractor may use special tooling subject to this clause on other Government effort when specifically approved in writing by the Contracting Officer for this contract and the Contracting Officer for the contract under which the special tooling will be used. Any other use of the special tooling shall be subject to advance written approval of the Contracting Officer. In the event the Government elects to remove any speical tooling that is required for continued contract performance, the contract shall be equitably adjusted in accordance with paragraph (m) of this clause.

(f) *Property control.*—(1) *Records.* The Contractor's special tooling records shall provide the following minimum information regarding each item of special tooling subject to this clause and shall be made available for Government inspection at all reasonable times:

(i) Number or code of the contract to which the tooling is accountable and the number or code of the contract for which the tooling was originally acquired or fabricated.

(ii) Retention codes as defined below:

(A) *Primary Code.* Assign one of the following to each item of special tooling:

Code A. Spares Tooling. Required to produce a provisioned spare part or assembly.

Code B. Judgment (Insurance) Tooling. Fabrication tools for parts that are not provisioned spares but which in the judgment of the Contractor will be required at some time for logistic support of the end item.

Code C. Rate Tooling. Necessary to economically produce at increased rates (e.g., for mobilization or surge) but not essential for parts fabrication at low production rates.

Code D. Assembly Tooling. Required for manufacture of the end product but not required for production of spare parts. Those items having no postproduction need except for potential modification or resumed production programs.

(B) *Secondary Code.* Assign one or more of the following codes, as applicable, to each item of special tooling:

Code 1. Repair Tooling. Items which are capable of being used for repair of provisioned parts or assemblies.

Code 2. Replaceable Tooling. Spares or judgment tooling (primary retention codes A or B) which, in the opinion of the Contractor, can be effectively and economically replaced by *soft* tooling on an *as required* basis in lieu of retention of the *hard* production tooling for supporting postproduction requirements.

Code 3. Maintenance Tooling. Items which are capable of being used for depot level maintenance of the applicable end item or components thereof.

Code 4. Crash Damage Tooling. Items which apply to provisioned or nonprovisioned parts or assemblies which are designated as or have the potential of being required for crash damage repairs.

(iii) Nomenclature, function, or comparable code.

(iv) Tool part number or code.

(v) Tool identification number, or quantity of each tool part number or code, if tool identification number is not assigned.

(vi) Part number(s) of item(s) on which used (complete hierarchy of part numbers).

(vii) Unit price. (Estimates are acceptable.)

(viii) Storage method code. Assign one of the following:

Code J. Inside storage.
Code K. Outside storage.
Code L. Other.

(ix) Estimated weight of tool, if over 25 pounds.

(x) Estimated volume of tool, if over 3 cubic feet.

(xi) Location of Contractor, subcontractor, vendor for each item. Use Federal Supply Code for Manufacturers (FSCM), or name and address if code is not available.

(xii) All operation sheets or other data as are necessary to show the manufacturing operation or processes for which such items were used, designed, or modified.

(2) *Identification or tagging.* To the extent practicable, the Contractor shall identify all special tooling subject to this clause in accordance with the Contractor's identification procedures.

(g) *Maintenance.* The Contractor shall maintain special tooling in accordance with sound industrial practice. These requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (j), Disposition instructions, of this clause.

(h) *Identification of excess special tooling.* The Contractor shall promptly identify and report all special tooling in excess of the amounts needed to complete full performance under this contract (see subdivision (i)(2)(i) of this clause).

(i) *Lists of special tooling.* The Contractor shall periodically prepare and distribute lists of special tooling as described below:

(1) *Special tooling list.* The list shall be furnished within 60 days after delivery of the first production end item under this contract or completion of the initial provisioning process, whichever is later, and shall include all special tooling subject to this clause as of the reporting date. However, if this contract represents the final production contract, the Contractor shall provide this list of all tools not later than 180 days prior to scheduled delivery of the last production end item. If this is a contract for storage of special tooling, the list shall be provided within 60 days of contract implementation.

(2) *Excess special tooling list*—(i) *Excess special tooling.* Except for items subject to subdivision (i)(2)(ii) of this clause, lists of special tooling excess to this contract shall be furnished within 60 days of the date that the item is determined to be excess. The Contractor shall include in this list the information prescribed in Format of lists, subparagraph (i)(3) of this clause, as well as the applicable excess code as follows:

Code V. Excess to contract requirements with no follow-on requirements.

Code W. Excess to contract requirements but can be used to support actual or anticipated follow-on requirements.

Code X. Excess due to changes in design or specification of the end items.

Code Y. Excess due to nonserviceable or nonrepairable condition.

Code Z. Other.

(ii) *Termination inventory.*These items shall be submitted on SF 1432 or by computer list attached to an SF 1432 in accordance with FAR 45.606. Format and content of this submission will be as prescribed by Format of lists, subparagraph (i)(3) of this clause, but will contain information as prescribed by FAR subpart 45.6, in effect on the date of award of this contract.

(3) *Format of lists.* Lists furnished by the Contractor shall state the type of list and shall include all information from subparagraph (f)(1), Records, of this clause, items (i) through (xi). All lists will be grouped by primary retention code as prescribed in subdivision (f)(1)(ii)(A) of this clause and further listed in tool part number sequence.

(4) *Distribution of lists.* The Contractor shall submit two copies of lists to each of the following recipients unless otherwise directed:

(i) The Contracting Officer.

(ii) The Administrative Contracting Officer.

(iii) The inventory control point designated by the contracting office.

(j) *Disposition instructions.* The Contracting Officer shall provide the Contractor with written disposition instructions within 180 days of receipt of the list as prescribed by subparagraph (i)(1) of this clause and within 90 days of the receipt of excess special tooling lists reported in accordance with subparagraph (i)(2) of this clause. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (j)(1) through (j)(3) of this clause, or a combination of such methods. The Contractor shall comply with such disposition instructions.

(1) The Contracting Officer may identify specific items of special tooling to be retained or give the Contractor a list specifying the products, parts, or services including follow-on requirements for which the Government may require special tooling and request the Contractor to identify all usable items of special tooling on hand that were designed for or used in the production or performance of such products, parts, or services. Once items of usable special tooling required by the Government are identified, the Contracting Officer may—

(i) Direct the Contractor to transfer specified items of special tooling to follow-on contracts requiring their use. Those items shall be furnished for use on the contract(s) as specified by the Contracting Officer and shall be subject to the provisions of the gaining contracts(s); or

(ii) Request the Contractor to enter into an appropriate storage contract for special tooling specified to be retained by the Contractor for the Government. Tooling to be stored shall be stored pursuant to a storage contract between the Government and the Contractor; or

(iii) Direct the Contractor to transfer title to the Government (to the extent not previously transferred) and deliver to the Government those items of special tooling which are specified for removal from the Contractor's plant.

(2) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling not specified by the Government pursuant to subparagraph (j)(1) of this clause. To the extent that the Contractor incurs any costs occasioned by compliance with such direction, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract. The net proceeds of all sales shall either be credited to the cost of contract performance or shall be otherwise paid to the Government as directed by the Contracting Officer. Sale of special tooling to the prime Contractor or any of its subcontractors is subject to the prior written approval of the Contracting Officer.

(3) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or right in specified special tooling.

(4) Restoration of Contractor's premises. Unless otherwise provided in this contract, the Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if special tooling is withdrawn or if other special tooling is substituted, then the equitable adjustment under paragraph (m) of this clause may properly include restoration or rehabilitation costs.

(k) *Access to special tooling.* The Contractor shall provide access to special tooling subject to this clause at all reasonable times to all individuals designated by the Contracting Officer.

(l) *Storage or shipment.* The Contractor shall promptly arrange for either the shipment or the storage of special tooling specified in accordance with the final disposition instructions in subdivisions (j)(1)(ii) or (j)(1)(iii) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. All operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed shall accompany special tooling to be shipped or stored or shall otherwise be provided to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs costs for storage, shipment, packing, crating, or handling under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished special tooling;

(2) Delivery of Government-furnished special tooling in a condition not suitable for its intended use;

(3) A decrease in or substitution of special tooling; or

(4) Failure to repair or replace Government-furnished special tooling for which the Government is responsible.

(n) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

[54 FR 48995, Nov. 28, 1989]

52.245-18 Special Test Equipment.

As prescribed in 45.307-3, insert the following clause:

SPECIAL TEST EQUIPMENT (AUG 1988)

(a) *Special test equipment,* as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(b) The Contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in this contract and the prior approval of the Contracting Officer has been obtained. The Contractor shall provide the Contracting Officer with a written notice, at least 30 days in advance, of the Contractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than $1,000, and the following information on each item or component of equipment costing $1,000 or more:

(1) The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.

(2) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.

(3) The estimated cost of the item of special test equipment or component.

(4) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.

(c) The Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Contractor. Such Government-furnished items shall be subject to the Government Property clause, except that the Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the 30-day notice period in paragraph (b) of this clause. However, unless the Government notifies the Contractor of its decision to furnish the items within the 30-day notice period, the Contractor may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this contract.

(d) The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.

(e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Contractor shall comply with paragraph (b) above. In so complying, the Contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 27468, July 20, 1988; 53 FR 36028, Sept. 16, 1988; 54 FR 48997, Nov. 28, 1989]

52.245-19 Government Property Furnished "As Is."

As prescribed in 45.308-2, insert the following clause:

GOVERNMENT PROPERTY
FURNISHED "AS IS" (APR 1984)

(a) The Government makes no warranty whatsoever with respect to Government property furnished *as is*, except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an *as is* basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished *as is* shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished *as is* from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished *as is* in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished *as is* shall be governed by the Government Property clause of this contract.

(End of clause)

(AV 7-104.24(e) 1965 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48997, Nov. 28, 1989]

52.246-1 Contractor Inspection Requirements.

As prescribed in 46.301, insert the following clause in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).

CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

(End of clause)

(R 7-103.24 1968 SEP)

52.246-2 Inspection of Supplies—Fixed-Price.

As prescribed in 46.302, insert the following clause:

INSPECTION OF SUPPLIES—FIXED-PRICE (APR 1984)

(a) Definition. *Supplies*, as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; *provided*, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

(R 7-103.5(a) 1958 MAY)

(R 7-103.5(d) 1977 SEP)

(R 1-7.102-5)

Alternate I (JUL 1985). If a fixed-price incentive contract is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, in the total final negotiated cost fixed under the incentive price revision clause. However, replacements or corrections by the Contractor after the establishment of the total final price shall be at no increase in the total final price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the target price or, if established, the total final price or (2) may terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce any target price or, if it is established, the total final contract price. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in any target price or, if it is established, the total final price of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in any target price, or, if it is established, the total final price of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the total final price as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce any target price or, if it is established, the total final price of this contract.

Alternate II (JUL 1985). If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause:

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when redetermining the prices under the price redetermination clause. However, replacements or corrections by the Contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the initial contract prices or, if established, the redetermined contract prices or (2) terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract price or, if it is established, the redetermined contract prices. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in the initial contract prices, or, if it is established, the redetermined prices of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in the initial contract prices, or, if it is established, the redetermined prices of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the initial contract prices, or, if it is established, the redetermined prices of this contract, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce the initial contract prices, or, if it is established, the redetermined prices of this contract.

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26905, June 28, 1985]

52.246-3 Inspection of Supplies—Cost-Reimbursement.

As prescribed in 46.303, insert the following clause in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated:

INSPECTION OF SUPPLIES—COST-REIMBURSEMENT (APR 1984)

(a) Definitions.

Contractor's managerial personnel, as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at a plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

Supplies, as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

(R 7-203.5(a) 1974 OCT)

(R 1-7.202-5)

52.246-4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be inserted in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and inclusion of the clause is in the Government's interest.

INSPECTION OF SERVICES—FIXED-PRICE (APR 1984)

(a) Definitions. *Services,* as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(End of clause)

(R 7-1902.4 1971 NOV)

52.246-5 Inspection of Services—Cost-Reimbursement.

As prescribed in 46.305, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated:

INSPECTION OF SERVICES—COST-REIMBURSEMENT (APR 1984)

(a) Definition. *Services,* as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

(End of clause)

(R 7-1909.5 1971 NOV)

52.246-6 Inspection—Time-and-Material and Labor-Hour.

As prescribed in 46.306, insert the following clause:

INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986)

(a) Definitions. *Contractor's managerial personnel*, as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

Materials, as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the *hourly rate* for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

Alternate I (APR 1984). If Government inspection and acceptance are to be performed at the contractor's plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:

(e) The Government shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor's plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the contract administration office or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.

(R 7-901.21 1974 OCT)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 2667, Jan. 17, 1986]

52.246-7 Inspection of Research and Development—Fixed-Price.

As prescribed in 46.307(a), insert the following clause in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (b) a fixed-price contract is contemplated, and (c) the contract amount is expected to exceed the small purchase limitation; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. The following clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

INSPECTION OF RESEARCH AND DEVELOPMENT—FIXED-PRICE (APR 1984)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)

(R 7-302.4(a) 1976 JUL)

(R 1-7.302-4(a))

52.246-8 Inspection of Research and Development—Cost-Reimbursement.

As prescribed in 46.308, insert the following clause in solicitations and contracts for research and development when (a) the primary objective is the delivery of end items other than designs, drawings, or reports, and (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate:

INSPECTION OF RESEARCH AND DEVELOPMENT— COST-REIMBURSEMENT (APR 1984)

(a) Definitions. *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

Work, as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

(R 7-402.5(a)(1) 1974 OCT)

(R 1-7-402.5(a))

Alternate I (APR 1984). If it is contemplated that the contract will be on a no-fee basis, substitute paragraphs (f) and (g) below for paragraphs (f) and (g) of the basic clause.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to correct or replace work not meeting contract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Contractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may (1) by contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost, (2) require delivery of any undelivered articles, or (3) terminate the contract for default. Failure to agree on the amount of increased cost to be charged to the Contractor shall be a dispute.

(R 7-402.5(a)(3) 1974 OCT)

(R 1-7-402.5(b))

52.246-9 Inspection of Research and Development (Short Form).

As prescribed in 46.309, insert the following clause:

INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of clause)

(R 7-402.5(b) 1959 FEB)

(R 7-302.4(b) 1959 JUN)

(R 1-7.302-4(b))

(R 1-7.402-5(c))

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 27120, July 29, 1986]

52.246-10 Inspection of Facilities.

As prescribed in 46.310, insert the following clause in solicitations and contracts when a facilities contract is contemplated:

INSPECTION OF FACILITIES (APR 1984)

(a) Definition. *Contractor's managerial personnel*, as used in this clause, is defined in the Liability for the Facilities clause of this contract.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the facilities and work called for by this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the facilities and work called for by the contract, to the extent practicable at all places and times, including the period of manufacture. The Government may also inspect the facilities and work at the plant or plants of the Contractor or its subcontractors engaged in the performance of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work to be performed by the Contractor under this contract or any related contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements. Except as provided in paragraph (f) below, corrections and replacements shall be at Government expense if, under the terms of this contract, the facilities or work corrected or replaced were initially furnished, or required to be performed at Government expense.

(f) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements, without cost to the Government under this contract or any related contract or subcontract, if the defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or to the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(g) Corrected or replacement facilities or work shall be subject to this clause in the same manner as facilities or work originally completed under the contract.

(End of clause)

(R 7-702.6 1964 SEP)

52.246-11 Higher-Level Contract Quality Requirement (Government Specification).

As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-3):

HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (GOVERNMENT SPECIFICATION) (APR 1984)

(a) Definition. *Contract date*, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) The Contractor shall comply with the specification titled ——— [*Contracting Officer insert the title and number of the specification*], in effect on the contract date, which is hereby incorporated into this contract.

(End of clause)

(R 7-104.28 1967 AUG)

(R 7-104.33 1967 AUG)

(R 7-703.44 1967 AUG)

(R 7-203.5(b) 1967 AUG)

(R 7-302.4(c) 1967 AUG)

(R 7-402.5(c) 1967 AUG)

(R 7-602.10(b) 1967 AUG

(R 7-901.25 1967 AUG)

52.246-12 Inspection of Construction.

As prescribed in 46.312, insert the following clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

INSPECTION OF CONSTRUCTION (JUL 1986)

(a) Definition. *Work* includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not—

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 27120, July 29, 1986]

52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.

As prescribed in 46.313, insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements:

INSPECTION—DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (APR 1984)

(a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly and without additional charge all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

(b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may (1) by contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor and (2) terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of clause)

(R 7-2101.19 1976 OCT)

52.246-14 Inspection of Transportation.

As prescribed in 46.314, insert the following clause in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 1072(b)(1). (See part 47, Transportation.)

INSPECTION OF TRANSPORTATION (APR 1984)

The Government has the right to inspect and test the Contractor's services, facilities, and equipment at all reasonable times. The Contractor shall furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.

(End of clause)

(R 1-7.703-4)

52.246-15 Certificate of Conformance.

As prescribed in 46.315, insert the following clause in solicitations and contracts for supplies or services when the conditions in 46.504 apply:

CERTIFICATE OF CONFORMANCE (APR 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on —— —— [*insert date*], the ———— [*insert Contractor's name*] furnished the supplies or services called for by Contract No. ———— via ———— [*Carrier*] on ———— [*identify the bill of lading or shipping document*] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document."

Date of Execution: ————————
Signature: ————————
Title: ————————

(End of clause)

(R 7-104.100)

52.246-16 Responsibility for Supplies.

As prescribed in 46.316, insert the following clause in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may use the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation, and inclusion of the clause is authorized under agency procedures.

RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

(R 7-103.6 1968 JUN)

(R 1-7.102-6)

52.246-17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design is to be used, insert the word *design* before *material* in paragraph (b)(1)(i).

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (APR 1984)

(a) *Definitions. Acceptance,* as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

Correction, as used in this clause, means the elimination of a defect.

Supplies, as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include *data.*

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for ——— [*Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and *fitness for a particular purpose* are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within ——— ["Contracting Officer shall insert specific period of time; e.g., "45 days of the last delivery under this contract," or "45 days after discovery of the defect"].

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided*, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

(R 7-105.7(a) 1976 JUL)

Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(4), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for ——— [*Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

(2) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate III (APR 1984). If the supplies cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

(4) If the Contractor does not agree as to responsibility to correct or replace the supplies delivered, the Contractor shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c)(2) of this clause to correct or replace the defective or nonconforming supplies. In the event it is later determined that the supplies were not defective or nonconforming within the terms and conditions of this clause, the contract price will be equitably adjusted.

(AV 7-105.7(d)(4) 1976 JUL)

Alternate IV (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph(c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustment made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled *Equitable Adjustments Under Other Clauses* in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate V (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as (c)(7) if Alternate IV is also being used.

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.246–18 Warranty of Supplies of a Complex Nature.

As prescribed in 46.710(b)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design is to be used, insert the word *design* before *material* in paragraph (b)(1).

WARRANTY OF SUPPLIES OF A COMPLEX NATURE (APR 1984)

(a) *Definitions. Acceptance,* as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Correction, as used in this clause, means the elimination of a defect.

Supplies, as used in this clause, means the end items furnished by the Contractor and related services required under this contract. The word does not include *data.*

(b) *Contractor's obligations.* (1) The Contractor warrants that for ——— [*Contracting Officer shall state the specific warranty period after delivery, or the specified event* *whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; *provided, however*, that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

(2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the nonavailability.

(4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.

(6) All implied warranties of merchantability and *fitness for a particular purpose* are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Government may, at no increase in contract price—

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or

(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this clause, the Government shall be entitled to an equitable reduction in the contract price.

(3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within ——— [*Contracting Officer shall insert specific period of time in which notice shall be given to the Contractor; e.g., 45 days after delivery of the nonconforming supplies.; 45 days of the last delivery under this contract.*; or *45 days after discovery of the defect.*] The Contractor shall submit to the Contracting Officer a written recommendation within ——— [*Contracting Officer shall insert period of time*] as to the corrective action required to remedy the breach. After the notice of breach, but not later than ——— [*Contracting Officer shall insert period within which the warranty remedies should be exercised*] after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.

(4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be ——— [*Contracting Officer shall insert period within which the Contractor must be notified of a breach as to corrected or replaced supplies*] from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for ——— [*Contracting Officer shall insert period within which the Contractor must be notified of a breach of warranty as to corrected or replaced supplies*] thereafter.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(End of clause)

(R 7-105.7(b) 1976 JUL)

Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(6), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that, at the time of delivery, all supplies—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are, within the variations permitted by the contract, if any, of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(5) for paragraph (b)(5) of the basic clause:

(5) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate III (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled *Equitable Adjustments Under Other Clauses* in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate IV (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as *(c)(7)* if Alternate III is also used:

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated, and the use of a warranty clause has been approved under agency procedures.

WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (DEC 1989)

(a) *Definitions. Acceptance*, as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Correction, as used in this clause, means the elimination of a defect.

Defect, as used in this clause, means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

Supplies, as used in this clause, means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also means *data*.

(b) *Contractor's obligations*. (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor ——— [*Contracting Officer shall state the warranty period; e.g., at the time of delivery; within 45 days after delivery*, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.]

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall (i) promptly correct the defect or (ii) promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within ——— [*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., 30 days after delivery of the nonconforming supplies; 90 days of the last delivery under this contract;* or *90 days after discovery of the defect.*] Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within ——— [*Contracting Officer shall insert period of time*] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within ——— [*Contracting Officer shall insert period of time*] to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and *fitness for a particular purpose* are excluded from any obligation under this contract.

(c) *Remedies available to the Government.* (1) The rights and remedies of the Government provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within ——— [*Contracting Officer shall insert period of time*] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at ——— [*Contracting Officer shall insert locations where corrections may be performed*].

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5)(i) The Contracting Officer shall give the Contractor a written notice, specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

(9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate II (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled *Equitable Adjustments Under Other Clauses* in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate III (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as (c)(8) if Alternate II is also being used:

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48997, Nov. 28, 1989]

52.246-20 Warranty of Services.

As prescribed in 46.710(d), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures, unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used:

WARRANTY OF SERVICES (APR 1984)

(a) *Definitions. Acceptance,* as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

Correction, as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor ——— [*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., within 30 days from the date of acceptance by the Government.*; within 1000 hours of use by the Government.; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time]. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

(R 7-1904.5(b) 1979 SEP)

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

(R 7-604.4 1976 JUL)

Alternate I (APR 1984). If the Government specifies in the contract the use of any equipment by *brand name and model*, the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a *brand name and model* basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

(AV 7-604.4(b) 1976 JUL)

52.246-22 [Reserved]

52.246-23 Limitation of Liability.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of subpart 46.8 as indicated in 46.801 and (c) the contract requires delivery of end items that are not high-value items. This clause may also be used as prescribed in 46.805(b) in contracts of $25,000 or less.

LIMITATION OF LIABILITY (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

(End of clause)

(R 7-104.45(a) 1974 APR)

52.246-24 Limitation of Liability—High-Value Items.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of subpart 46.8 as indicated in 46.801 and (c) the contract requires delivery of high-value items:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS (APR 1984)

(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:

(1) In subcontracts for high-value items only, after obtaining the Contracting Officer's advance written approval, insert this clause, including this paragraph (f).

(2) In subcontracts for other end items only, insert the clause at Federal Acquisition Regulation (FAR) subsection 52.246-23, Limitation of Liability.

(g) In any subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause at FAR subsection 52.246-23 is appropriate, after obtaining the Contracting Officer's advance written approval to use this clause, the Contractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that subcontract:

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(R 7-104.45(b) 1979 MAR)

(R 7-204.33(a) 1974 APR)

Alternate I (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

(R 7-104.45(c) 1979 MAR)

(R 7-204.33(b) 1974 APR)

52.246-25 Limitation of Liability—Services.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of subpart 46.8 as indicated in 46.801 and (c) the contract is for services. This clause may also be used as prescribed in 46.805(b) in contracts of $25,000 or less.

LIMITATION OF LIABILITY—SERVICES (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over $25,000.

(End of clause)

(R 7-1912 1974 APR)

52.247-1 Commercial Bill of Lading Notations.

(a) As prescribed in 47.104-4(a), insert the following clause:

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts other than small purchases under Part 13 (see 47.104-2(b) and 47.104-3).

(b) As prescribed in 47.104-4(b), the contracting officer may insert the following clause:

COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the ——— [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the ——— [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No —— This may be confirmed by contacting ——— [*name and address of the contract administration office listed in the contract*]."

(End of clause)

(R 7-103.25 1969 DEC)

(R 7-203.14 1969 DEC) (R 1-19.109-1(b))

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 48997, Nov. 28, 1989; 55 FR 38518, Sept. 18, 1990]

52.247-2 Permits, Authorities, or Franchises.

As prescribed in 47.207-1(a), insert the following clause in solicitations and contracts for transportation or for transportation-related services when regulated transportation is involved. The clause need not be used when a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirement for holding or obtaining State authority to operate within the State.

PERMITS, AUTHORITIES, OR FRANCHISES (APR 1984)

(a) The offeror certifies that the offeror does ☐, does not ☐, hold authorization from the Interstate Commerce Commission or other cognizant regulatory body. If authorization is held, it is as follows:

———————————————————

(Name of regulatory body)

———————————————————

(Authorization No.)

(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments.

(End of clause)

(R 1-7.701-2)

52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.

As prescribed in 47.207-1(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices:

CAPABILITY TO PERFORM A CONTRACT FOR THE RELOCATION OF A FEDERAL OFFICE (APR 1984)

(a) If the move specified in this contract is to be performed by the Contractor as a carrier within the borders of more than one State, including the District of Columbia, (i.e., an interstate move), the Contractor shall have obtained and hold appropriate and current operating authority from the Interstate Commerce Commission.

(b) (1) If the move specified in this contract is to be performed by the Contractor as a carrier wholly within the borders of one State or the District of Columbia (i.e., an intrastate move), the Contractor shall, when required by the State, or the District of Columbia, in which the move is to take place, have obtained and hold appropriate and current operating authority from that jurisdiction in the form of a certificate, permit, or equivalent license to operate.

(2) If no authority to operate is required by the State or the District of Columbia, the Contractor as carrier shall maintain facilities, equipment, and a business address within the jurisdiction in which the move is to take place. However, if the move is to originate and/or terminate within an area of one State, or the District of Columbia, that comprises a part of a recognized Commercial Zone (see 49 CFR 1048) the boundaries of which encompass portions of more than one State or the District of Columbia, it shall be sufficient if the Contractor as carrier maintains facilities, equipment, and a business address within the Commercial Zone and holds appropriate operating authority, if required, from the jurisdiction within which the Contractor maintains the facilities, equipment, and business address.

(c) If the move specified in this contract will not be performed by the Contractor as carrier, it must be performed for the Contractor by a carrier operating under a subcontract with the Contractor. In this case, the Contractor shall not be subject to the requirements of paragraphs (a) and (b) above, but shall be responsible for requiring and ensuring that the subcontractor carrier complies with those requirements in every respect.

(d) The Contractor shall be in compliance with the applicable requirements of this clause at least 14 days before the date on which performance of the contract shall commence under the terms specified; *except* that, if the period from the date of award of the contract to the date that performance shall commence is less than 28 days, the Contractor shall comply with the applicable requirements of this clause midway between the time of award and the time of commencement of performance.

(End of clause)

(R 1-7.703-20)

Alternate I (APR 1984). If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or Commercial zone, delete paragraph (b) of the basic clause and redesignate the remaining paragraphs (*b*) *and* (*c*). In the 6th line of the new paragraph (b), delete the words *paragraphs* (*a*) *and* (*b*) *above* and replace them with *paragraph* (*a*) *above.*

(R 1-7.703-20)

52.247-4 Inspection of Shipping and Receiving Facilities.

As prescribed in 47.207-1(c), insert the following provision in solicitations for transportation or for transportation-related services when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids:

INSPECTION OF SHIPPING AND RECEIVING FACILITIES (APR 1984)

(a) Offerors are urged to inspect the shipping and receiving facilities where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance.

(b) Site visits have been scheduled as follows:

____
(locations) ___________________________
(dates) ______________________________
(times) ______________________________

(c) For further information offerors may contact:

(name) ______________________________
(telephone) ___________________________

(End of provision)

(R 1-19.702-9)

52.247-5 Familiarization with Conditions.

As prescribed in 47.207-1(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services to ensure that offerors become familiar with conditions under which and where the services will be performed:

FAMILIARIZATION WITH CONDITIONS (APR 1984)

The offeror shall become familiar with all available information regarding difficulties that may be encountered and the conditions, including safety precautions, under which the work must be accomplished under the contract. The offeror shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required in this contract because the offeror failed to investigate the conditions or to become acquainted with all information concerning the services to be performed.

(End of clause)

(R 1-7.702(c)(2))

52.247-6 Financial Statement.

As prescribed in 47.207-1(e), insert the following provision in solicitations for transportation or for transportation-related services to ensure that offerors are prepared to furnish financial statements:

FINANCIAL STATEMENT (APR 1984)

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

(End of provision)

(R 1-7.702(c)(1))

52.247-7 Freight Excluded.

As prescribed in 47.207-3(d)(2), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when any commodities or types of shipments have been identified for exclusion:

FREIGHT EXCLUDED (APR 1984)

Excluded from the scope of this contract are shipments that can be more advantageously or economically moved via parcel post or small package carrier; shipments of unusual value, explosives and other dangerous articles, household goods, commodities in bulk, commodities injurious or contaminating to other freight; and shipments that the Government may elect to move in Government vehicles.

(End of clause)

(R 1-19.702-1(a)(3))

52.247-8 Estimated Weights or Quantities Not Guaranteed.

As prescribed in 47.207-3(e)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when weights or quantities are estimates:

ESTIMATED WEIGHTS OR QUANTITIES NOT GUARANTEED (APR 1984)

The estimated weights or quantities are not a guarantee of actual weights or quantities, as the Government does not guarantee any particular volume of traffic described in this contract. However, to the extent services are required as described in this contract and in accordance with the terms of this contract, orders for these services will be placed with the Contractor.

(End of clause)

(R 1-19.702-1(a)(4))

52.247-9 Agreed Weight—General Freight.

As prescribed in 47.207-4(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the shipping activity determines the weight of shipments of freight other than household goods or office furniture:

AGREED WEIGHT—GENERAL FREIGHT (APR 1984)

The shipping activity shall determine the weight of each shipment. The weight shall be shown on the covering shipping document and shall be accepted by the Contractor as the agreed weight.

(End of clause)

(R 1-19.702-3(a))

52.247-10 Net Weight—General Freight.

As prescribed in 47.207-4(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments:

NET WEIGHT—GENERAL FREIGHT (APR 1984)

(a) The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having the empty vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale) from the gross weight of the vehicle (determined by having the loaded vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale).

(b) The Contractor shall attach the original copies of the empty and loaded weight certificates to the invoice for services.

(End of clause)

(R 1-19.702-3(a))

52.247-11 Net Weight—Household Goods or Office Furniture.

As prescribed in 47.207-4(b), insert the following clause in contracts for transportation or for transportation-related services when movements of Government employees' household goods or relocations of Government offices are involved:

NET WEIGHT—HOUSEHOLD GOODS OR OFFICE FURNITURE (APR 1984)

(a) *Net weight—full loads.* The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the empty vehicle with all blankets, pads, chains, dollies, hand trucks. and all other necessary equipment inside the vehicle) from the gross weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the fully loaded vehicle before arrival at destination).

(b) *Net weight—part loads.* The net weight of the first part load shall be determined in the same manner as specified for a full load. The net weight of the second part load shall be determined by using as the tare weight of the vehicle the gross weight of the vehicle containing the first part load and deducting this weight from the new gross weight (determined by having the loaded vehicle weighed again, in the same manner as specified for the full load). The same procedure shall apply for each succeeding part load.

(c) *Weight certificates.* The contractor shall attach the original copy of each weight certificate to the invoice for services.

(End of clause)

(R 1-19.702-3(b))

52.247-12 Supervision, Labor, or Materials.

As prescribed in 47.207-5(b), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when the contractor is required to furnish supervision, labor, or materials:

SUPERVISION, LABOR, OR MATERIALS (APR 1984)

The Contractor shall furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the services contemplated under this contract in an orderly, timely, and efficient manner.

(End of clause)

(R 1-19.702-2(b))

52.247-13 Accessorial Services—Moving Contracts.

As prescribed in 47.207-5(c), insert a clause substantially as follows in solicitations and contracts for the transportation of household goods or office furniture:

ACCESSORIAL SERVICES—MOVING CONTRACTS (APR 1984)

(a) *Packing and/or crating and padding.* The Contractor shall—

(1) Perform all of the packing and/or crating and padding necessary for the protection of the goods to be transported;

(2) Furnish packing containers, including, but not limited to, barrels, boxes, wardrobes, and cartons; all crating materials; and all padding materials and equipment;

(3) Furnish or cause to be furnished, when necessary, padding or other protective material for the interior of the buildings, including elevators, from and to which the property will be moved under this contract; and

(4) Ensure that all containers and materials are clean and of quality sufficient for protection of the goods.

(b) *Disassembling and reassembling of property and servicing appliances.* The disassembling of property; e.g., beds and sectional bookcases, and the preparing of appliances; e.g., washers, driers, and record players, for shipment shall be performed by the Contractor. The Contractor shall reassemble the property and service the appliances upon delivery at the new location.

(c) *Unpacking and/or uncrating and placement of property.* The Contractor shall unpack and/or uncrate all property that was packed and/or crated for movement under this contract. The Contractor shall also place the property in the new location as instructed by the owner of the property or authorized representative, and shall remove all packing and similar or related material from the premises as requested by the owner.

(End of clause)

(R 1-19.702-2(b))

52.247-14 Contractor Responsibility for Receipt of Shipment.

As prescribed in 47.207-5(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR RESPONSIBILITY FOR RECEIPT OF SHIPMENT (APR 1984)

The Contractor shall diligently count and examine all goods tendered for shipment, receipt for them, and make appropriate written exception for any goods not in apparent good order.

(End of clause)

(R 1-19.702-7)

52.247-15 Contractor Responsibility for Loading and Unloading.

As prescribed in 47.207-5(e), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for loading and unloading shipments:

CONTRACTOR RESPONSIBILITY FOR LOADING AND UNLOADING (APR 1984)

(a) (1) Unless otherwise specified in this contract to cover store-door or inside delivery, the Contractor shall load and unload shipments at no additional expense to the Government.

(2) The Government or its agent will place or receive freight at the tailgate of the Contractor's vehicle. Tailgate delivery, for purposes of this contract, is defined as that which enables a forklift truck or similar equipment, with operator only, to place or remove cargo from the tailgate of the Contractor's vehicle.

(b) If loading is the responsibility of the Contractor, the Contractor shall perform all shoring, blocking, and bracing. The Contractor shall provide dunnage at the Contractor's expense.

(End of clause)

(R 1-19.702-7)

52.247-16 Contractor Responsibility for Returning Undelivered Freight.

As prescribed in 47.207-5(f), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for returning undelivered freight:

CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT (APR 1984)

(a) When, through no fault of the Contractor, a shipment cannot be delivered, the Contractor shall contact the shipper for disposition instructions. If the shipment is ordered returned to the origin point, the charges assessed for the return trip shall be the same as the charges assessed for the outbound trip. The shipper shall maintain a record of the goods that, through no fault of the Contractor, could not be delivered and are returned to the shipper. If, at a future date, the returned goods are determined to be related to a claim against the

Contractor, the claim will be adjusted accordingly.

(b) When, through the fault of the Contractor, a shipment cannot be delivered, the Contractor shall return the shipment to the origin point at no charge to the Government. Any charges incurred for redelivery, which are in excess of the charges that would have been incurred under this contract, shall be for the Contractor's account in accordance with the Default clause of the contract.

(End of clause)

(R 1-19.702-7)

52.247-17 Charges.

As prescribed in 47.207-6(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CHARGES (APR 1984)

In no event shall charges under this contract be in excess of charges based on the Contractor's lowest rate available to the general public, or be in excess of charges based on rates otherwise tendered to the Government by the Contractor for the same type of service.

(End of clause)

(R 1-19.702-10(a)(1))

52.247-18 Multiple Shipments.

As prescribed in 47.207-6(c)(5)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination:

MULTIPLE SHIPMENTS (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to multiple consignees at the same destination, the rate charged for each shipment shall be the rate applicable to the aggregate weight.

(End of clause)

(R 1-19.702-10(c))

52.247-19 Stopping in Transit for Partial Unloading.

As prescribed in 47.207-6(c)(5)(ii), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination:

STOPPING IN TRANSIT FOR PARTIAL UNLOADING (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to two or more consignees along the route between the origin and the last destination, the rate charged shall be the rate applicable to the aggregate weight, plus a charge of $—— for each shipment unloaded at an intermediate point en route to the last destination.

(End of clause)

(R 1-19.702-10(c))

52.247-20 Estimated Quantities or Weights for Evaluation of Offers.

As prescribed in 47.207-6(c)(6), insert the following provision in solicitations for transportation or for transportation-related services when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair:

ESTIMATED QUANTITIES OR WEIGHTS FOR EVALUATION OF OFFERS (APR 1984)

For the purpose of evaluating offers, and for no other purpose, the following estimated quantities or weights will be considered as the quantities or weights to be shipped between each origin and destination listed:

Origin	Destination	Estimated quantity or weight

(End of provision)

(R 1-19.702-10(a)(5))

52.247-21 Contractor Liability for Personal Injury and/or Property Damage.

As prescribed in 47.207-7(c), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE (APR 1984)

(a) The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.

(b) The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance during the continuance of this contract, insuring the Contractor against all claims for injury or damage.

(c) The Contractor shall maintain Workers' Compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(d) The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

(R 1-9.702-4(a) and (b))

52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.

As prescribed in 47.207-7(d), insert the following clause in solicitations and contracts for the transportation of freight other than household goods:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO FREIGHT OTHER THAN HOUSEHOLD GOODS (APR 1984)

Except when loss and/or damage arises out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall assume full liability for any and all goods lost and/or damaged in the movement covered by this contract.

(End of clause)

(R 1-19.702-4(a))

52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.

As prescribed in 47.207-7(e), insert the following clause in solicitations and contracts for the transportation of household goods, including the rate per pound appropriate to the situation:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO HOUSEHOLD GOODS (APR 1984)

(a) Except when loss and/or damage arise out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall be liable to the owner for the loss of and/or damage to any article while being—

(1) Packed, picked up, loaded, transported, delivered, unloaded, or unpacked;

(2) Stored in transit; or

(3) Serviced (appliances, etc.) by a third person hired by the Contractor to perform the servicing.

(b) The Contractor shall be liable for loss and/or damage discovered by the owner within ——— days [*insert 30 days* or *45 days* at most] after delivery if the owner notifies the Contractor of the loss and/or damage within ——— days [*insert 30 days* or *45 days* at most] from the date of delivery.

(c) The Contractor shall indemnify the owner of the goods at a rate of ——— cents per pound per article.

(End of clause)

(R 1-19.702-4(b))

52.247-24 Advance Notification by the Government.

As prescribed in 47.207-8(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government is responsible for notifying the contractor of specific service times or unusual shipments:

ADVANCE NOTIFICATION BY THE GOVERNMENT (APR 1984)

The Government will notify the Contractor ——— hours in advance of the number of pieces and weight of all normal shipments and the time the shipment will be available for pickup. On other-than-normal shipments, the Government will furnish additional information; e.g., dimension of oversized pieces, as necessary to determine the amount of equipment and/or manpower needed to perform the required services.

(End of clause)

(R 1-19.702-8 DEC 1972)

52.247-25 Government-Furnished Equipment with or without Operators.

As prescribed in 47.207-8(a)(2)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government furnishes equipment with or without operators:

GOVERNMENT-FURNISHED EQUIPMENT WITH OR WITHOUT OPERATORS (APR 1984)

The Government will provide ——— [*insert equipment; e.g., forklifts*] with or without operators at ——— [*strike out with* or *without*, as applicable, and insert origin, destination, or both] to assist in ——— [*insert loading, unloading, or both*], when required.

(End of clause)

(R 1-19.702-8)

52.247-26 Government Direction and Marking.

As prescribed in 47.207-8(a)(3), insert the following clause in solicitations and contracts for transportation or for transportation-related services when office relocations are involved:

GOVERNMENT DIRECTION AND MARKING (APR 1984)

The agency being relocated shall tag or mark property, showing floor, room number, and location where property is to be placed in the new building. The agency shall provide sufficient personnel to direct the Contractor's personnel in the placement of the property at destination.

(End of clause)

(R 1-19.702-8)

52.247-27 Contract Not Affected by Oral Agreement.

As prescribed in 47.207-8(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACT NOT AFFECTED BY ORAL AGREEMENT (APR 1984)

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer or an authorized representative.

(End of clause)

(R 1-7.703-17)

52.247-28 Contractor's Invoices.

As prescribed in 47.207-9(c), insert the following clause in solicitations and contracts for drayage or other term contracts for transportation or for transportation-related services:

CONTRACTOR'S INVOICES (APR 1984)

The Contractor shall submit itemized invoices as instructed by the agency ordering services under this contract. The Contractor shall annotate each invoice with the contract number and other ordering office document identification.

(End of clause)

(R 1-7.702(a))

52.247-29 F.o.b. Origin.

As prescribed in 47.303-1(c), insert the following clause:

F.O.B. ORIGIN (JUN 1988)

(a) The term *f.o.b. origin*, as used in this clause, means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance,

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) *to be converted to a Government bill of lading*, or (B) *this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be *f.o.b. destination*.

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17860, May 18, 1988]

52.247-30 F.o.b. Origin, Contractor's Facility.

As prescribed in 47.303-2(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin, contractor's facility:

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (APR 1984)

(a) The term *f.o.b. origin, contractor's facility*, as used in this clause, means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government, if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) *to be converted to a Government bill of lading*, or (B) *this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(End of clause)

(R 1-19.303)

52.247-31 F.o.b. Origin, Freight Allowed.

As prescribed in 47.303-3(c), insert the following clause:

F.O.B. ORIGIN, FREIGHT ALLOWED (JUN 1988)

(a) The term *f.o.b. origin, freight allowed*, as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside within reach of the ship's loading tackle when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency, or when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) *to be converted to a Government bill of lading*, or (B) *this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be *f.o.b. destination.*

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17860, May 16, 1988]

52.247-32 F.o.b. Origin, Freight Prepaid.

As prescribed in 47.303-4(c), insert the following clause:

F.O.B. ORIGIN, FREIGHT PREPAID (JUN 1988)

(a) The term *f.o.b. origin, freight prepaid*, as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) The cost of transportation, ultimately the Government's obligation, is prepaid by the contractor to the point specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing or marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) *to be converted to a Government bill of lading*, or (B) *this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier;

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and

(7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be *f.o.b. destination*.

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17860, May 18, 1988]

52.247-33 F.o.b. Origin, with Differentials.

As prescribed in 47.303-5(c), insert the following clause:

F.O.B. ORIGIN, WITH DIFFERENTIALS (JUN 1988)

(a) The term *f.o.b. origin, with differentials*, as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in Contractor's offer may be added to the contract price.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specification; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable.

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) *to be converted to a Government bill of lading*, or (B) *this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government*; and

(vi) The signature of the carrier's agent and the date the shipment is received by carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) (1) It may be advantageous to the offeror to submit f.o.b. origin prices that include only the lowest cost to the Contractor for loading of shipment at the Contractor's plant or most favorable shipping point. The cost beyond that plant or point of bringing the supplies to the place of delivery and the cost of loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the offeror's lowest cost when the offeror ships for the offeror's account. Accordingly, the offeror may indicate differentials that may be added to the offered price. These differentials shall be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options under this clause that the Government may specify at the time of shipment.

(2) These differential(s) will be considered in the evaluation of offers to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading) as a separate reimbursable item on the Contractor's invoice for the supplies.

(3) The Government shall have the option of performing or arranging at its own expense any transportation from Contractor's shipping plant or point to carrier's facility at the time of shipment and, whenever this option is exercised, the Government shall make no reimbursement based on a quoted differential.

(4) Offeror's differentials in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment and not included in the f.o.b. origin price indicated in the Schedule by the offeror, are as follows:

————(*carload, truckload, less-load,*
————*wharf, flatcar, driveaway, etc.*)

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 17861, May 18, 1988]

52.247-34 F.o.b. Destination.

As prescribed in 47.303-6(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination:

F.O.B. DESTINATION (APR 1984)

(a) The term *f.o.b. destination*, as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or *constructive placement* as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including *piggyback*) is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

(R 1-19.306(a)(1) and (b))

(R 7-104.71 1969 APR)

52.247-35 F.o.b. Destination, within Consignee's Premises.

As prescribed in 47.303-7(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination, within consignee's premises:

F.O.B. DESTINATION, WITHIN CONSIGNEE'S PREMISES (APR 1984)

(a) The term *f.o.b. destination, within consignee's premises*, as used in this clause, means free of expense to the Government delivered and laid down within the doors of the consignee's premises, including delivery to specific rooms within a building if so specified.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

(R 1-19.306(a)(2) and (b))

52.247-36 F.a.s. Vessel, Port of Shipment.

As prescribed in 47.303-8(c), insert the following clause in solicitations and contracts when the delivery term is f.a.s. vessel, port of shipment:

F.A.S. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term *f.a.s. vessel, port of shipment*, as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship's receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government's request and expense, assist obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

(R 1-19.308)

52.247-37 F.o.b. Vessel, Port of Shipment.

As prescribed in 47.303-9(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. vessel, port of shipment:

F.O.B. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term *f.o.b. vessel, port of shipment*, as used in this clause, means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

(R 1-19.307)

52.247-38 F.o.b. Inland Carrier, Point of Exportation.

As prescribed in 47.303-10(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland carrier, point of exportation:

F.O.B. INLAND CARRIER, POINT OF EXPORTATION (APR 1984)

(a) The term *f.o.b. inland carrier, point of exportation,* as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

(R 1-19.309)

52.247-39 F.o.b. Inland Point, Country of Importation.

As prescribed in 47.303-11(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland point, country of importation:

F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984)

(a) The term *f.o.b. inland point, country of importation,* as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located; and

(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and

(3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

(End of clause)

(R 1-19.310)

52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.

As prescribed in 47.303-12(c), insert the following clause in solicitations and contracts when the delivery term is ex dock, pier, or warehouse, port of importation:

EX DOCK, PIER, OR WAREHOUSE, PORT OF IMPORTATION (APR 1984)

(a) The term *ex dock, pier, or warehouse, port of importation,* as used in this clause, means free of expense to the Government delivered on the designated dock or pier or in the warehouse at the specified port of importation.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver shipment in good order and condition; and

(ii) Pay and bear all charges up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(3) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(End of clause)

(R 1-19.311)

52.247-41 C.& f. Destination.

As prescribed in 47.303-13(c), insert the following clause in solicitations and contracts when the delivery term is c.&f. destination:

C.& F. DESTINATION (APR 1984)

(a) The term *c.& f. destination*, as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the Contractor.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2) (i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery; and

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(End of clause)

(R 1-19.312)

52.247-42 C.i.f. Destination.

As prescribed in 47.303-14(c), insert the following clause in solicitations and contracts when the delivery term is c.i.f. destination:

C.I.F. DESTINATION (APR 1984)

(a) The term *c.i.f. destination*, as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the Contractor.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2) (i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery;

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination; and

(6) Obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government Contracting Officer.

(End of clause)

(R 1-19.313)

52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.

As prescribed in 47.303-15(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of exportation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF EXPORTATION (APR 1984)

(a) The term *f.o.b. designated air carrier's terminal, point of exportation*, as used in this clause, means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier's terminal specified in the contract.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean Government bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for the purpose of exportation.

(End of clause)

(R 1-19.314)

52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.

As prescribed in 47.303-16(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of importation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF IMPORTATION (APR 1984)

(a) The term *f.o.b. designated air carrier's terminal, point of importation*, as used in this clause, means free of expense to the Government delivered to the air carrier's terminal at the point of importation specified in the contract.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3) (i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and

(ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.

(End of clause)

(R 1-19.315)

52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.

As prescribed in 47.305-2(b), insert the following provision in solicitations when offers are solicited on the basis of both f.o.b. origin and f.o.b. destination:

F.O.B. ORIGIN AND/OR F.O.B. DESTINATION EVALUATION (APR 1984)

Offers are invited on the basis of both f.o.b. origin and f.o.b. destination, and the Government will award on the basis the Contracting Officer determines to be most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)

(R 7-2003.24(d) 1968 JUN)

52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.

As prescribed in 47.305-3(b)(4)(ii), insert the following provision in f.o.b. origin solicitations when price evaluation for shipments from various shipping points is contemplated:

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B. ORIGIN OFFERS (APR 1984)

(a) If more than one shipping point or plant is designated by the offeror and the offeror fails to indicate the quantity per shipping point or plant before bid opening, the Government will evaluate the offer on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

(b) If the offeror, before bid opening (or the closing date specified for receipt of offers) fails to indicate any shipping point or plant, the Government will evaluate the offer on the basis of delivery from the plant at which the contract will be performed, as indicated in the offer. If no plant is indicated in the offer, the offer will be evaluated on the basis of delivery from the Contractor's business address indicated in the offer.

(c) If the offeror uses a shipping point other than that which has been used by the Government as a basis for the evaluation of offers, any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

(R 7-2003.24(c) 1968 JUN)

52.247-47 Evaluation—F.o.b. Origin.

As prescribed in 47.305-3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, the provision shall be modified accordingly.

EVALUATION—F.O.B. ORIGIN (APR 1984)

Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating offers, only these methods will be considered in establishing the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the United States (excluding Alaska and Hawaii). This transportation cost will be added to the offer price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

(R 7-2003.23(d) 1974 APR)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 31427, Sept. 3, 1986]

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause in solicitations and contracts when supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (APR 1984)

If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by—

(a) Common carrier, the Contractor agrees to furnish in support of the Contractor's invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;

(b) Parcel post, the Contractor agrees to furnish a certificate of mailing with the Contractor's invoice; and

(c) Other than common carrier or parcel post, the Contractor agrees to attach to the Contractor's invoice a receipted copy of the appropriate delivery document showing receipt at the destination specified in the contract.

(End of clause)

(R 7-104.76 1968 JUN)

52.247-49 Destination Unknown.

As prescribed in 47.305-5(b)(2), insert the following provision in solicitations when destinations are tentative and only for the purpose of evaluating offers:

DESTINATION UNKNOWN (APR 1984)

For the purpose of evaluating offers and for no other purpose, the final destination(s) for the supplies will be considered to be as follows: ________ ____________________

____

(End of provision)

(R 7-2003.24(a) 1968 JUN)

52.247-50 No Evaluation of Transportation Costs.

As prescribed in 47.305-5(c)(1), insert the following provision in solicitations when exact destinations are not known and it is impractical to establish tentative or general delivery places for the purpose of evaluating transportation costs:

NO EVALUATION OF TRANSPORTATION COSTS (APR 1984)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)

(R 7-2003.70 1974 APR)

52.247-51 Evaluation of Export Offers.

As prescribed in 47.305-6(e), insert the following provision in solicitations when supplies are to be exported through CONUS ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis:

EVALUATION OF EXPORT OFFERS (APR 1984)

(a) *Port handling and ocean charges—other than DOD water terminals.* Port handling and ocean charges in tariffs on file with the Federal Maritime Commission or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt offers) and effective for the date of the expected initial shipment shall be used in the evaluation of offers.

(b) *F.o.b. origin, transportation under Government bill of lading.* (1) Offers shall be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, shall be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and ocean shipping costs from the United States port of loading (see paragraph (d) below) to the overseas port of discharge. The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Offers shall be evaluated on the basis of shipment through one of the ports set forth in paragraph (d) below to the overseas port of discharge. Evaluation shall be made on the basis of shipment through the port that will result in the lowest cost to the Government.

(3) Ports of loading shall be considered as destinations within the meaning of the term *f.o.b. destination* as that term is used in the F.o.b. Origin clause of this contract.

(c) *F.o.b. port of loading with inspection and acceptance at origin.* (1) *F.o.b. port of loading with inspection and acceptance at origin.* Offers shall be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see paragraph (2) below), shall be the port handling charges at the port of loading and the ocean shipping cost from the port of loading (see paragraph (d) below) to the overseas port of discharge.

(2) Unless offers are applicable only to f.o.b. origin delivery under Government bills of lading (see paragraph (b) above), offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: ——————

[*Offerors insert at least one of the ports listed in paragraph (d) below.*]

(d) *Ports of loading for evaluation of offers.* Ports to be used by the Government in evaluating offers are as follows:

————————————————————

[Contracting Officer list ports of loading.]

(e) *Ports of loading nominated by offeror.* The ports of loading named in paragraph (d) above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, offerors may nominate additional ports of loading that the offeror considers to be more favorable to the Government. The Government may disregard such nominated ports if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S.-flag vessels, and other pertinent transportation factors, it determines that use of the nominated ports is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of offers only for those items scheduled in this provision for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between April 15 and November 30 annually). All ports named, including those nominated by offerors and determined to be eligible as provided in this provision, shall be considered in evaluating all offers received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations shall be based on availability of ocean services by U.S.-flag vessels only. Additional U.S. port(s) of loading nominated by offeror, if any: ————

(f) *Price basis*: Offeror shall indicate whether prices are based on—

( ) Paragraph (b), f.o.b. origin, transportation by GBL to port listed in paragraph (d);

( ) Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d));

( ) Paragraph (e), f.o.b. origin, transportation by GBL to port nominated in paragraph (e); and/or

( ) Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(End of provision)

(R 7-2003.20 1968 JUN)

Alternate I (APR 1984). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute for it the following paragraph (a):

(a) *Port handling and ocean charges—DOD water terminals.* Port handling and ocean charges published by the Military Traffic Management Command and on file as of the date of bid opening (or the closing date specified for receipt of offers) and effective for the date of the expected initial shipment shall be used for the evaluation of offers.

(R 7-2003.20 1968 JUN)

Alternate II (APR 1984). When offers are solicited on an f.o.b. origin only basis, delete paragraphs (c) and (f) from the basic provision, but do not redesignate the ensuing paragraphs. Add the following basic paragraph (g) to the provision:

(g) Paragraphs (c) and (f) have been deleted but ensuing paragraphs have not been redesignated.

(R 7-2003.20 1968 JUN)

Alternate III (APR 1984). When offers are solicited on an f.o.b. destination only basis, delete paragraph (b) from the basic provision but do not redesignate the ensuing paragraphs. Delete subparagraph (c)(2) and paragraph (f) from the provision and substitute the following subparagraph (c)(2) and paragraph (f). Add paragraph (g) below.

(c)(2) Offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: ——————

[*Offerors insert at least one of the ports listed in paragraph* (d) *below.*].

(f) *Price basis.* Offerors shall indicate whether prices are based on—

☐ Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d)); or

☐ Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(g) Paragraph (b) has been deleted, but ensuing paragraphs have not been redesignated.

(R 7-2003.20 1968 JUN)

52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

As prescribed in 47.305-6(f)(2), insert the following clause in solicitations and contracts when shipments will be consigned to DOD air or water terminal transshipment points:

CLEARANCE AND DOCUMENTATION REQUIREMENTS—SHIPMENTS TO DOD AIR OR WATER TERMINAL TRANSSHIPMENT POINTS (APR 1984)

All shipments to water or air ports for transshipment to overseas destinations are subject to the following requirements unless clearance and documentation requirements have been expressly delegated to the Contractor:

(a) At least 10 days before shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for—

(1) Each shipment weighing 10,000 pounds or more; and

(2) Each shipment weighing less than 10,000 pounds; if the cargo either—

(i) Is classified TOP SECRET, SECRET, OR CONFIDENTIAL;

(ii) Will require exclusive use of a motor vehicle;

(iii) Will occupy full visible capacity of a railway car or motor vehicle;

(iv) Is less than a carload or truckload, but will be tendered as a carload or truckload; or

(v) Is to be shipped to an ammunition outloading port for water shipment; or

(3) Each shipment weighing less than 10,000 pounds if the cargo consists of—

(i) Narcotics;

(ii) Perishable biological material;

(iii) Vehicles to be offered for driveaway service;

(iv) Explosives, or other dangerous articles classified as A, B, or C explosives;

(v) Poisons, classes A, B, or C; or

(vi) Radioactive material, as defined in 49 CFR 170-179.

(b) The Contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

(c) If the Contracting Officer directs delivery within a shorter period than 10 days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

(d) At least 5 days before shipping cargo to either a water port or an air port (regardless of the weight, security classification, or the commodity description), the Contractor shall provide the Government transportation office the information shown in paragraph (e) below to permit preparation of a Transportation Control and Movement Document (TCMD).

(e) When applying for the Export Release in paragraph (a) above or when providing information for preparation of the TCMD in accordance with paragraph (d) above, the Contractor shall furnish the—

(1) Proposed date or dates of shipment;

(2) Number and type of containers;

(3) Gross weight and cube of the shipment;

(4) Number of cars or trucks that will be involved;

(5) Transportation Control Number(s)(TCN) as required for marking under MIL-STD-129 or Federal Standard 123; and

(6) Proper shipping name as specified in 46 CFR 146.05 for all items classified as dangerous substances as required for marking under MIL-STD-129.

(f) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with the—

(1) Transportation Control Number, Consignor Code of activity directing the shipment; i.e., cognizant contract administration office, purchasing office when contract administration has been retained, or a Contractor specifically delegated MILSTAMP responsibilities in the contract whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit;

(2) Export Release Number and valid shipping period, if stated (if expired, the Contractor shall request a renewal); and

(3) Cubic foot measurement of each shipment unit.

(g) All annotations on the movement documents shall be made in the *Description of Articles* space *except*, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled *Route Order/Release No.*

(h) The Contractor shall (1) mail a copy of the commercial bill of lading or other movement document to the transshipment point and (2) give a copy of the commercial bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

(End of clause)

(R 7-104.74 1974 APR)

52.247-53 Freight Classification Description.

As prescribed in 47.305-9(b)(1), insert the following provision in solicitations when the supplies being acquired are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply:

FREIGHT CLASSIFICATION
DESCRIPTION (APR 1984)

Offerors are requested to indicate below the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as offeror uses for commercial shipment. This description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.), the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the Government. Offeror understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, OFFEROR DESCRIBES THIS COMMODITY AS ________________

(End of provision)

(R 7-2003.17 1968 JUN)

52.247-54 Diversion of Shipment under F.o.b. Destination Contracts.

As prescribed in 47.305-11(b)(2), insert the following clause:

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (MAR 1989)

(a) When a place of delivery is changed in accordance with the Changes clause of this contract, the contract price shall be adjusted pursuant to that clause for any resulting increase or decrease in the cost of performance. No adjustment shall be made for changes in transportation costs when supplies are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by comparing the cost of—

(1) Shipments to the new destinations as evidenced by copy of paid freight bills to be

supplied by the Contractor with the invoice; and

(2) Shipments to the original or old destination as evidenced by copy of the appropriate paid freight bills to be supplied by the Contractor, or, in the event no shipments were made, as evidenced by the applicable rates of a common or contract carrier. If carrier rates are not publicly filed with any regulatory body, (e.g., interstate shipments moving by rail piggyback service) the Contractor shall provide a copy of the contract, letter agreement, or other written communication from carriers quoting the rates/charges that would have been applied for shipments to the original or old destination.

(b) If (1) shipments to the new destination are made by the Contractor's owned or leased trucks and/or (2) shipments to the original destination were made or would have been made by the Contractor's owned or leased trucks, the Contractor shall so certify. The Government shall make an appropriate adjustment in contract prices for payment purposes by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier tariffs as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

(c) If any or all of the following data are not clearly shown on, or available from, copies of paid freight bills for each diverted shipment, the Contractor shall supply a statement showing the—

(1) Full name of the carrier or carriers in the routing;

(2) Number of containers;

(3) Gross shipping weight;

(4) Actual date of shipment; and

(5) Freight description for the supplies as indicated in the *National Motor Freight Classification* or the *Uniform Freight Classification* (Rail).

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 5059, Jan. 31, 1989]

52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305-12(a)(2), insert the following clause in solicitations and contracts when Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs:

F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) Unless otherwise specified in this solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor's plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(End of clause)

(R 7-104.69 1968 JUN)

52.247-56 Transit Arrangements.

As prescribed in 47.305-13(a)(3)(ii), insert the following provision in solicitations when benefits may accrue to the Government because transit arrangements may apply:

TRANSIT ARRANGEMENTS (APR 1984)

The lowest appropriate common carrier transportation costs, including offeror's through transit rates and charges when applicable, from offeror's shipping points, via the transit point, to the ultimate destination will be used in evaluating offers.

Transit point(s)	Destination(s)

(End of provision)

(R 7-2003.23(c) 1968 JUN)

52.247-57 Transportation Transit Privilege Credits.

As prescribed in 47.305-13(b)(4), insert the following clause in solicitations and contracts when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits:

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (APR 1984)

(a) If the offeror has established with regulated common carriers transit privileges that can be applied to the supplies when shipped from the original source, the offeror is invited to propose to use these credits for shipping the supplies to the designated Government destinations. The offeror will ship these supplies under commercial bills of lading, paying all remaining transportation charges connected with the shipment, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the offeror.

(b) After loading on the carrier's equipment and acceptance by the carrier, these shipments under paid commercial bills of lading will move for the account of and at the risk of the Government (unless, pursuant to the Changes clause, the office administering the contract directs use of Government bills of lading).

(c) The amount quoted below by the offeror represents the transportation costs in cents per 100 pounds (freight rate) for full carload/truckload shipments of the supplies from offeror's original source, via offeror's transit plant or point, to the Government destination(s) including the carrier's transit privilege charge, less the applicable transit credit (i.e., the amount (rate) initially paid to the carrier for shipment from original source to offeror's transit plant or point).

(d) The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of offers). To have the offer evaluated on this basis, the offeror must insert below the remaining transportation charges that the offeror agrees to pay, including any transit charges, subject to reimbursement by the Government, as explained in this clause, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS ____________

TO DESTINATION ____________________

(End of clause)

(R 7-2003.18 1968 JUN)

52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.

As prescribed in 47.305-15(a)(2), insert the following clause in solicitations and contracts when supplies may be shipped in carload lots by rail:

LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS (APR 1984)

(a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

(b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.

(c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.

(d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(End of clause)

(R 7-104.73 1975 OCT)

52.247-59 F.o.b. Origin—Carload and Truckload Shipments.

As prescribed in 47.305-16(a), insert the following clause in solicitations and contracts when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (APR 1984)

(a) The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer.

(b) For evaluation purposes, the agreed weight of a carload or truckload shall be the highest applicable minimum weight that will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals).

(c) For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight that will result in the lowest possible freight rate (or per car charge) on file or published as of date of shipment.

(d) If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for evaluation of offers, the Contractor agrees to ship such scheduled quantity in one shipment.

(e) The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of clause)

(R 7-2003.24(b) 1968 JUN)

52.247-60 Guaranteed Shipping Characteristics.

As prescribed in 47.305-16(b)(1), insert the following clause:

GUARANTEED SHIPPING CHARACTERISTICS (DEC 1989)

(a) The offeror is requested to complete subparagraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in subparagraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:

(i) Type of container: Wood Box ____, Fiber Box ____, Barrel ____, Reel ____, Drum ____, Other (Specify) ____;

(ii) Shipping configuration: Knocked-down____, Set-up ____, Nested ____, Other (specify) ____;

(iii) Size of container ____" (Length), x ____" (Width), x ____" (Height) = ____ Cubic FT;

(iv) Number of items per container ____ Each;

(v) Gross weight of container and contents____ LBS

(vi) Palletized/skidded ____ Yes ____ No;

(vii) Number of containers per pallet/skid____;

(viii) Weight of empty pallet bottom/skid and sides____ LBS;

(ix) Size of pallet/skid and contents ____ LBS Cube ____;

(x) Number of containers or pallets/skid per railcar ____*—

Size of railcar ____

Type of railcar ____

(xi) Number of containers or pallets/skids per trailer ____*—

Size of trailer ____ FT

Type of trailer ____

(2) To be completed by the Government after evaluation but before contract award

(i) Rate used in evaluation ____;

(ii) Tender/Tariff ____;

(iii) Item ____;

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*Number of complete units (contract line item) to be shipped in carrier's equipment.

(b) The guaranteed shipping characteristics requested in subparagraph (a)(1) of this clause do not establish actual transportation requirements, which are specified elsewhere in this solicitation. The guaranteed shipping characteristics will be used only for the purpose of evaluating offers and establishing any liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.

(End of clause)

[54 FR 48997, Nov. 28, 1989; 55 FR 30, Jan. 2, 1990]

52.247-61 F.o.b. Origin—Minimum Size of Shipments.

As prescribed in 47.305-16(c), insert the following clause in solicitations and contracts when volume rates may apply:

F.O.B. ORIGIN—MINIMUM SIZE OF SHIPMENTS (APR 1984)

The Contractor agrees that shipment will be made in carload and truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed in writing by the Contracting Officer. The agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are outsized or of such nature that they cannot be loaded at the highest minimum weight bracket.

(End of clause)

(R 7-104.72 1968 JUN)

(R 1-19.202-4(b))

52.247-62 Specific Quantities Unknown.

As prescribed in 47.305-16(d)(2), insert the following clause in solicitations and contracts when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

SPECIFIC QUANTITIES UNKNOWN (APR 1984)

(a) For the purpose of evaluating *f.o.b. destination* offers, the Government estimates that the quantity specified will be shipped to the destinations indicated:

Estimated quantity	Destination

(b) If the quantity shipped to each destination varies from the quantity estimated, and if the variation results in a change in the transportation costs, appropriate adjustment shall be made.

(End of clause)

(R 1-19.202-7(b)(1)(iii))

52.247-63 Preference for U.S.-Flag Air Carriers.

As prescribed in 47.405, insert the following clause:

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (APR 1984)

(a) *International air transportation*, as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States, as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

U.S.-flag air carrier, as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

(End of certification)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)

(R 7-104.95 1979 NOV)

(R 1-1.323-2)

[48 FR 42478, Sept. 19, 1983, as amended at 53 FR 27468, July 20, 1988]

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

As prescribed in 47.507(a), insert the following clause in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 1984)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

(1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

(End of clause)

(R 1-19.108-2(b))

Alternate I (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

Alternate II (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(R 7-603.41 1979 JUNE)

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause in supply or service contracts to provide a value engineering incentive under the conditions specified in 48.201. In solicitations and contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting *under contracts awarded during the sharing period* for *during the sharing period.* For engineering-development and low-rate-initial-production solicitations and contracts, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting for *the number of future contract units scheduled for delivery during the sharing period, a number equal to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted.*

VALUE ENGINEERING (MAR 1989)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) *Definitions. Acquisition savings,* as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

Collateral costs, as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

Collateral savings, as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

Contracting office includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

Contractor's development and implementation costs, as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

Future unit cost reduction, as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

Government costs, as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

Instant contract, as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

Instant unit cost reduction means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

Negative instant contract savings means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

Net acquisition savings means total acquisition savings, including instant, concurrent and future contract savings, less Government costs.

Sharing base, as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted.

Unit, as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

Value engineering change proposal (VECP) means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change –

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation*. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission*. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) *Government action*. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) *Sharing rates*. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

(figures in percent)

Contract Type	Sharing Arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (other than incentive)	50	50	25	25
Incentive (fixed-price or cost)	*	50	*	25
Cost-reimbursement (other than incentive)**	25	25	15	15

*Same sharing arrangement as the contract's profit or fee adjustment formula.

**Includes cost-plus-award-fee contracts.

(g) *Calculating net acquisition savings.* (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) *Concurrent and future contract savings.* (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of $100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

> "These data, furnished under the Value Engineering clause of contract ———, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Goverment's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms *unlimited rights* and *limited rights* are defined in part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (APR 1984). If the contracting officer selects a mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's). In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the program requirement sharing rates in paragraph (f) below.

(R 7-104.44(b) 1974 APR)

Alternate II (APR 1984). If the contracting officer selects *both* a value engineering incentive and mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* For those contract line items designated in the Schedule as subject to the value engineering program requirement, the Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting VECP's. In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from VECP's accepted under the program, in accordance with the program requirement sharing rates in paragraph (f) below. For remaining areas of the contract, the Contractor is encouraged to develop, prepare, and submit VECP's voluntarily; for VECP's accepted under these remaining areas, the incentive sharing rates apply.

(NM)

Alternate III (APR 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a contract calling for a value engineering incentive, delete paragraph (j) from the basic clause and redesignate the remaining paragraphs accordingly.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 5059, Jan. 31, 1989]

52.248-2 Value engineering—architect-engineer.

As prescribed in 48.201(f), insert the following clause:

VALUE ENGINEERING—ARCHITECT-ENGINEER (MAR 1990)

(a) *General.* The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP's). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct. Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP's by the Government.

(b) *Definitions. Life cycle cost,* as used in this clause, is the sum of all costs over the useful life of a building, system or product. It includes the cost of design, construction, acquisition, operation, maintenance, and salvage (resale) value, if any.

Value engineering, as used in this clause, means an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

Value engineering proposal, as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

(c) *Submissions.* After award of an architect-engineering contract the contractor shall—

(1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;

(2) Submit, for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader's qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and

(3) The team leader shall be responsible for prestudy work assembly and shall edit, reproduce, and sign the final report and each VEP. All VEP's, even if submitted earlier as an individual submission, shall be contained in the final report.

(d) *VEP preparation.* As a minimum, the contractor shall include the following information in each VEP:

(1) A description of the difference between the existing the proposed design, the comparative advantage and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance and any pertinent objective test data.

(2) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted.

(3) A separate detailed estimate of the impact on project cost of each VEP, if

cepted and implemented by the Government.

(4) A description and estimate of costs the Government may incur in implementing the VEP, such as design change cost and test and evaluation cost.

(5) A prediction of any effects the proposed change may have on life cycle cost.

(6) The effect the VEP will have on design or construction schedules.

(e) *VEP acceptance.* Approved VEP's shall be implemented by bilateral modification to this contract.

(End of clause)

[55 FR 3889, Feb. 5, 1990]

52.248-3 Value Engineering—Construction.

As prescribed in 48.202, insert the following clause:

VALUE ENGINEERING—CONSTRUCTION (MAR 1989)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) *Definitions. Collateral costs,* as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

Collateral savings, as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exlcusive of acquisition savings, whether or not the acquisition cost changes.

Contractor's development and implementation costs, as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

Government costs, as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

Instant contract savings, as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

Value engineering change proposal (VECP) means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided,* that it does not involve a change—

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.* (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it.

If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) *Sharing.* (1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(h) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering—Construction clause of contract ———, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms *unlimited rights* and *limited rights* are defined in part 27 of the Federal Acquisition Regulation.)

(End of clause)

(R 7-602.50 1977 AUG)

Alternate I (APR 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a construction contract, delete paragraph (g) from the basic clause and redesignate the remaining paragraphs accordingly.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 5059, Jan. 31, 1989]

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be $100,000 or less, except (a) if use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate (b), in contracts for research and development work with an educational or nonprofit institution on a no-profit basis, (c) in contracts for architect-engineer services, or (d) if one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

(R 1-8.705-1)

(R 1-8.705-2)

(R 7-103.21(a) 1968 FEB)

(R 7-602.29(b) 1965 JAN)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

(b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of the contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.

(R 7-2101.8(b) 1976 OCT)

52.249-2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, and the contract amount is expected to be over $100,000, except in contracts for (a) dismantling and demolition, (b) research and development work with an educational or nonprofit institution on a no-profit basis, or (c) architect-engineer services. It shall not be used if the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the prep aration of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

(R 1-8.701)

(R 7-103.21(b) 1974 OCT)

Alternate I (APR 1984). If the contract is for construction, substitute the following paragraph (f) for paragraph (f) of the basic clause:

(f) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(R 1-8.703)

(R 7-602.29(a) 1974 APR)

Alternate II (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (l)(2) of the basic clause.

(R 8-701(c))

Alternate III (APR 1984). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (f) for paragraph (f) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(f) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(R 1-8.703)

(R 7-602.29(a) 1974 APR)

(R 8-701(c))

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990]

52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (APR 1984)

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of settlement costs, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under subparagraph (b)(8) above.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contrac ing Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

(R 7-2101.8(a) 1976 OCT)

Alternate I (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (l)(2) from the basic clause.

(R 7-2101.8(a) 1976 OCT)

52.249-4 Termination for Convenience of the Government (Services) (Short Form).

As prescribed in 49.502(c), insert the following clause in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the Contracting Officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

(R 7-1902.16 1968 FEB)

(R 1-8.705-1)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a no-profit or no-fee basis:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in

which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided,* that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(e) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, *Cost Principles for Nonprofit Organizations,* July 8, 1980, those cost principles shall apply; *provided,* that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(f) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(g) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

(End of clause)

(R 1-8.704-1)

(R 7-302.10(b) 1973 APR)

(R 7-302.10(c) 1974 APR)

52.249-6 Termination (Cost-Reimbursement).

As prescribed in 49.503(a)(1), insert the following clause:

TERMINATION (COST-REIMBURSEMENT) (MAY 1986)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. *Default* includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) After expiration of the plant clearance period as defined in subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.

(h) The cost principles and procedures in part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e) or (g) above or paragraph (k) below, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g) or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(k) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

Alternate I (APR 1984). If the contract is for construction, substitute the following subparagraph (g)(4) for subparagraph (g)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

(R 7-605.26 1974 APR)

(R 1-8.700-2(a)(3))

Alternate II (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (L)(2) from the basic clause.

(R 8-702(d))

Alternate III (APR 1984). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following subparagraph (g)(4) shall be substituted for subparagraph (g)(4) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

(R 7-605.26 1974 APR)

(R 1-8.700-2(a)(3))

(R 8-702(d))

Alternate IV (APR 1984). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (g) and (k) for paragraphs (g) and (k) of the basic clause:

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(k) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

(R 7-901.4 1974 OCT)

Alternate V (APR 1984). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (g) and (k) for paragraphs (g) and (k) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(k) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

(R 7-901.4 1974 OCT)

[48 FR 42478, Sept. 19, 1983, as amended at 51 FR 19717, May 30, 1986]

52.249-7 Termination (Fixed-Price Architect-Engineer).

As prescribed in 49.503(b), insert the following clause in solicitations and contracts for architect-engineer services when a fixed-price contract is contemplated:

TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-607.4 1972 APR)

52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as *manufacturing materials* in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.707)

(R 7-103.11 1959 AUG)

Alternate I (APR 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

(R 1-7.703-8)

52.249-9 Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation, except those with educational or nonprofit institutions on a no-profit basis. This clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be diverted to other programs).

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negliqence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.710)

(R 7-302.9(a) 1969 AUG)

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if completion dates are essential).

DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.709-1)

(R 7-602.5 1969 AUG)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) (1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(R 7-2101.7 1976 OCT)

Alternate II (APR 1984). If the contract is to be awarded during a period of national emergency, subparagraph (b)(1) below may be substituted for subparagraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-602.5 1969 AUG)

(R 1-16.404(e))

Alternate III (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following subparagraph (b)(1) may be substituted for subparagraph (b)(1) of the basic clause:

(a) (1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising

from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-2101.7 1976 OCT)

52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).

As prescribed in 49.505(a), insert the following clause in consolidated facilities contracts and facilities acquisition contracts:

TERMINATION OF WORK (CONSOLIDATED FACILITIES OR FACILITIES ACQUISITION) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole, or from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining any item of reimbursable cost under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With the approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part under this contract; the approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit a list, to the Contracting Officer certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove these items or enter into an agreement for their storage. Within 15 days, the Government shall accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items or, if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay that amount.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount of costs to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount, determined as follows:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts; and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) The cost principles and procedures in part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d) or (f) above, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) above, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(j) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(k) Any related contract of the Contractor may be equitably adjusted if it provides for such an adjustment and if it is affected by a Notice of Termination under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of any Notice of Termination issued under this clause.

(End of clause)

(R 7-702.22 1973 APR)

Alternate I (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (j)(2) from the basic clause.

(R 7-702.22 1973 APR)

52.249-12 Termination (Personal Services).

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for personal services (see part 37):

TERMINATION (PERSONAL SERVICES) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)

(R 7-503.7 1953 JAN)

52.249-13 Failure to Perform.

As prescribed in 49.505(c), insert the following clause in facilities contracts except facilities use contracts with nonprofit educational institutions:

FAILURE TO PERFORM (APR 1984)

(a) Subject to the Excusable Delays clause (if included in this contract), if the Contractor fails to perform this contract under its terms, the Contracting Officer shall give the Contractor written notice stating the failure. Thereafter, regardless of any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related contract, to the extent the equitable adjustment arises from the Contractor's failure to perform or from any reasonable remedial action taken by the Contracting Officer based upon the failure.

(b) The failure of the Government to insist, in one or more instances, upon the performance of any term of this contract is not a waiver of the Government's right to future performance of such term, and the Contractor's obligation for future performance of such term shall continue in effect.

(c) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-702.27 1964 SEP)

52.249-14 Excusable Delays.

As prescribed in 49.505(d), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts. When used in construction contracts, substitute the words *completion time* for *delivery schedule* in the last sentence of the clause. When used in facilities contracts, substitute the words *termination of work* for *termination* in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. *Default* includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

(R 7-203.11 1969 AUG)

(R 1-8.708)

(R 7-605.39)

(R 1-7.403-5)

(R 7-702.7)

(R 7-703.7)

(R 1-7.202-11)

(R 1-8.700-2(c))

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in 50.403-3, insert the following clause in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)):

INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)

(a) *Contractor's principal officials*, as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Pub. L. 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for—

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)

(R 7-303.62 1977 JAN)

Alternate I (APR 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

(R 7-403.57 1974 APR)

52.251-1 Government Supply Sources.

As prescribed in 51.107, insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be *Government-furnished property,* as distinguished from *Government property.* The provisions of the clause entitled *Government Property,* except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

(R 7-204.28, 1977 AUG)

(R 1-7.203-13)

Alternate I (APR 1984) If a facilities contract is contemplated, delete the last sentence from the basic clause.

(R 7-204.28, 1977 AUG)

52.251-2 Interagency Fleet Management System Vehicles and Related Services.

As prescribed in 51.205, insert the following clause:

INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (AUG 1989)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 29284, July 11, 1989]

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (JUN 1988)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(End of provision)

[53 FR 17861, May 18, 1988, as amended at 54 FR 48998, Nov. 28, 1989]

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(End of clause)

[53 FR 17861, May 18, 1988, as amended at 54 FR 48998, Nov. 28, 1989]

52.252-3 Alterations in Solicitation.

As prescribed in 52.107(c), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

(End of provision)

(NM)

52.252-4 Alterations in Contract.

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

(End of clause)

(R 7-105.1(a) 1949 JUL)

52.252-5 Authorized Deviations in Provisions.

As prescribed in 52.107(e), insert the following provision in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert (*DEVIATION*) after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of (*DEVIATION*) after the date of the provision.

(b) The use in this solicitation of any ——— [insert regulation name] (48 CFR Chapter ———) provision with an authorized deviation is indicated by the addition of (*DEVIATION*) after the name of the regulation.

(End of provision)

(NM)

52.252-6 Authorized Deviations in Clauses.

As prescribed in 52.107(f), insert the following clause in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert (*DEVIATION*) after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the date of the clause.

(b) The use in this solicitation or contract of any ——— [insert regulation name] (48 CFR ———) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the name of the regulation.

(End of clause)

(NM)

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract (see 52.101(e)).

52.301 Solicitation provisions and contract clauses (Matrix).

[55 FR 3890, Feb. 5, 1990]

PART 53—FORMS

Sec.
53.000 Scope of part.
53.001 Definitions.

Subpart 53.1—General

53.100 Scope of subpart.
53.101 Requirements for use of forms.
53.102 Current editions.
53.103 Exceptions.
53.104 Overprinting.
53.105 Computer preparation.
53.106 Special construction and printing.
53.107 Obtaining forms.
53.108 Recommendations concerning forms.
53.109 Forms prescribed by other regulations.
53.110 Continuation sheets.

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.
53.201 Federal acquisition system.
53.201-1 Contracting authority and responsibilities (SF 1402).
53.202 [Reserved]
53.203 Improper business practices and personnel conflicts of interest.
53.204 Administrative matters.
53.204-1 Safeguarding classified information within industry (DD Form-254, DD Form-441).
53.204-2 Contract reporting (SF's 279, 281).
53.205 Publicizing contract actions.
53.205-1 Paid advertisements.
53.206—53.208 [Reserved]
53.209 Contractor qualifications.
53.209-1 Responsible prospective contractors.
53.210—53.212 [Reserved]
53.213 Small purchases and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
53.214 Sealed bidding.
53.215 Contracting by negotiation.
53.215-1 Solicitation and receipt of proposals and quotations.
53.215-2 Price negotiation (SF's 1411, 1412).
53.216 Types of contracts.
53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).
53.217—53.218 [Reserved]
53.219 Small business and small disadvantaged business concerns.
53.220—53.221 [Reserved]
53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).
53.223—53.227 [Reserved]
53.228 Bonds and insurance.
53.229 Taxes (SF's 1094, 1094-A).
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53.230—53.231 [Reserved]
53.232 Contract financing (SF 1443).
53.233—53.234 [Reserved]
53.235 Research and Development Contracting (SF 298).
53.236 Construction and architect-engineer contracts.
53.236-1 Construction (SF's 1417, 1420, 1442, and OF's 347, 1419, and 1419A).
53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).
53.237—53.241 [Reserved]
53.242 Contract administration.
53.242-1 Novation and change-of-name agreements (SF 30).
53.243 Contract modifications (SF 30).
53.244 [Reserved]
53.245 Government property.
53.246 [Reserved]
53.247 Transportation (U.S. Government Bill of Lading).
53.248 [Reserved]
53.249 Termination of contracts.
53.250 [Reserved]
53.251 Contractor use of Government supply sources (OF 347).

Subpart 53.3—Illustrations of Forms

53.300 Scope of subpart.
53.301 Standard forms.
53.301-18 Standard Form 18, Request for Quotations.
53.301-24 Bid Bond.
53.301-25 Performance Bonds.
53.301-25-A Payment Bond.
53.301-25-B Standard Form 25-B, Continuation Sheet (For Standard Forms 24, 25, and 25-A).
53.301-26 Standard Form 26, Award/Contract.
53.301-28 Affidavit of Individual Surety.
53.301-30 Standard Form 30, Amendment of Solicitation/Modification of Contract.
53.301-33 Standard Form 33, Solicitation, Offer and Award.
53.301-34 Annual Bid Bond.
53.301-35 Annual Performance Bond.
53.301-44 Standard Form 44, Purchase Order—Invoice—Voucher.
53.301-98 Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice.
53.301-98a Standard Form 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).
53.301-99 Standard Form 99, Notice of Award of Contract.
53.301-119 Statement of Contingent or Other Fees.
53.301-120 Standard Form 120, Report of Excess Personal Property.

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53.301-120-A Standard Form 120-A, Continuation Sheet (Report of Excess Personal Property).
53.301-126 Standard Form 126, Report of Personal Property for Sale.
53.301-126-A Standard Form 126-A, Report of Personal Property for Sale (Continuation Sheet).
53.301-129 Standard Form 129, Solicitation Mailing List Application.
53.301-252 Standard Form 252, Architect-Engineer Contract.
53.301-254 Standard Form 254, Architect-Engineer and Related Services Questionnaire.
53.301-255 Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project.
53.301-273 Standard Form 273, Reinsurance Agreement for a Miller Act Performance Bond.
53.301-274 Standard Form 274, Reinsurance Agreement for a Miller Act Payment Bond.
53.301-275 Standard Form 275, Reinsurance Agreement in Favor of the United States.
53.301-279 Standard Form 279, FPDS-Individual Contract Action Report (Over $10,000).
53.301-281 Standard Form 281, FPDS-Summary of Contract Actions of $10,000 or Less.
53.301-294 Subcontracting Report for Individual Contracts.
53.301-295 Summary Subcontract Report.
53.301-298 Standard Form 298, Report Documentation Page.
53.301-308 Standard Form 308, Request for Determination and Response to Request.
53.301-1034 Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal.
53.301-1034A Standard Form 1034A, Public Voucher for Purchases and Services Other Than Personal — Memorandum Copy.
53.301-1035 Standard Form 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.
53.301-1035A Standard Form 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.
53.301-1093 Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.
53.301-1094 Standard Form 1094, U.S. Tax Exemption Certificates.
53.301-1094-A Standard Form 1094-A, Tax Exemption Certificates Accountability Record.

Sec.
53.301-1165 Standard Form 1165, Receipt for Cash-Subvoucher.
53.301-1402 Standard Form 1402, Certificate of Appointment.
53.301-1403 Preaward Survey of Prospective Contractor (General).
53.301-1404 Preaward Survey of Prospective Contractor—Technical.
53.301-1405 Preaward Survey of Prospective Contractor—Production.
53.301-1406 Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-1407 Preaward Survey of Prospective Contractor—Financial Capability.
53.301-1408 Preaward Survey of Prospective Contractor—Production.
53.301-1409 Standard Form 1409, Abstract of Offers.
53.301-1410 Standard Form 1410, Abstract of Offers—Continuation.
53.301-1411 Contract Pricing Proposal Cover Sheet.
53.301-1412 Standard Form 1412, Claim for Exemption from Submission of Certified Cost of Pricing Data.
53.301-1413 Standard Form 1413, Statement and Acknowledgment.
53.301-1414 Standard Form 1414, Consent of Surety.
53.301-1415 Standard Form 1415, Consent of Surety and Increase of Penalty.
53.301-1416 Payment Bond for Other than Construction Contracts.
53.301-1417 Standard Form 1417, Pre-solicitation Notice (Construction Contract).
53.301-1419 [Reserved]
53.301-1420 Standard Form 1420, Performance Evaluation—Construction Contracts.
53.301-1421 Standard Form 1421, Performance Evaluation (Architect-Engineer).
53.301-1423 Standard Form 1423, Inventory Verification Survey.
53.301-1424 Standard Form 1424, Inventory Disposal Report.
53.301-1426 Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form).
53.301-1427 Standard Form 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
53.301-1428 Standard Form 1428, Inventory Schedule B.
53.301-1429 Standard Form 1429, Inventory Schedule B—Continuation Sheet.
53.301-1430 Standard Form 1430, Inventory Schedule C (Work-in-Process).
53.301-1431 Inventory Schedule C—Continuation Sheet (Work-in-Process).
53.301-1432 Inventory Schedule D (Special Tooling and Special Test Equipment).
53.301-1433 Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

Sec.
53.301-1434 Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).
53.301-1435 Settlement Proposal (Inventory Basis).
53.301-1436 Settlement Proposal (Total Cost Basis).
53.301-1437 Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301-1438 Settlement Proposal (Short Form).
53.301-1439 Schedule of Accounting Information.
53.301-1440 Application for Partial Payment.
53.301-1442 Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).
53.301-1443 Standard Form 1443, Contractor's Request for Progress Payment.
53.301-1444 Request for Authorization of Additional Classification and Rate.
53.301-1445 Labor Standards Interview.
53.301-1446 Labor Standards Investigation Summary Sheet.
53.301-1447 Solicitation/Contract.
53.302 Optional forms.
53.302-17 Optional Form 17, Sealed Bid Label.
53.302-90 Release of Lien on Real Property.
53.302-91 Release of Personal Property from Escrow.
53.302-333 Procurement Integrity Certification for Procurement Officials.
53.302-336 Optional Form 336, Continuation Sheet.
53.302-347 Optional Form 347, Order for Supplies or Services.
53.302-348 Optional Form 348, Order for Supplies or Services Schedule—Continuation.
53.302-1419 Optional Form 1419, Abstract of Offers—Construction.
53.302-1419A Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.
53.303 Agency forms.
53.303-DD-254 Department of Defense DD Form 254, Contract Security Classification Specification.
53.303-DD-441 Department of Defense DD Form 441, Security Agreement.
53.303-WH-347 Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42637, Sept. 19, 1983, unless otherwise noted.

53.000 Scope of part.

This part (a) prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.

Exception, as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

Subpart 53.1—General

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in subpart 53.2 and under *Forms* in the FAR Index.

53.102 Current editions.

The form prescriptions in subpart 53.2 and the illustrations in subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201-45.510).

[53 FR 43395, Oct. 26, 1988]

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.

Agencies may computer-generate the standard and optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR.

[53 FR 43395, Oct. 26, 1988]

53.106 Special construction and printing.

Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

Standard Forms	Special Construction and Printing
(a) SF 18—	(1) With vertical lines omitted (for listing of supplies and services, unit, etc.); (2) As reproducible masters; and/or (3) In carbon interleaved pads or sets.
(b) SF's 26,30,33,1447—.	As die-cut stencils or reproducible masters.
(c) SF 44—	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)
(d) SF 1442—	(1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered.)

[48 FR 42637, Sept. 19, 1983, as amended at 51 FR 27121, July 29, 1986; 54 FR 48998, Nov. 28, 1989]

53.107 Obtaining forms.

(a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog - Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents, GPO, Washington, DC 20402. Standard and optional forms not available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165(GAO).

53.110 Continuation sheets.

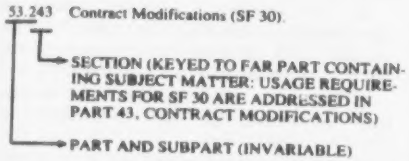
Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (e.g., OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

[48 FR 42637, Sept. 19, 1983, as amended at 51 FR 27121, July 29, 1986]

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:


53.243 Contract Modifications (SF 30)
SECTION (KEYED TO FAR PART CONTAINING SUBJECT MATTER: USAGE REQUIREMENTS FOR SF 30 ARE ADDRESSED IN PART 43, CONTRACT MODIFICATIONS)
PART AND SUBPART (INVARIABLE)

[48 FR 42637, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), Certificate of Appointment. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 [Reserved]

53.203 Improper business practices and personnel conflicts of interest.

(a) *SF 119 (REV. 1/90), Statement of Contingent or Other Fees.* SF 119 is prescribed for use in obtaining information as to whether improper influence has been used in obtaining Government contracts, as specified in 3.405(b)(5).

(b) *OF 333 (9/90), Procurement Integrity Certification for Procurement Officials.* OF 333 is prescribed for use, as specified in 3.104-12(a)(3).

[48 FR 42637, Sept. 19, 1983, as amended at 55 FR 36798, Sept. 6, 1990; 55 FR 38518, Sept. 18, 1990]

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in subpart 4.4 and the clause at 52.204-2:

(a) *DD Form 254 (Department of Defense (DOD)), Contract Security Classification Specification.* (See 4.403(c)(1).)

(b) *DD Form 441 (DOD), Security Agreement.* (See paragraph (b) of the clause at 52.204-2.)

53.204-2 Contract reporting (SF's 279, 281).

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

(a) *SF 279 (REV. 10/88), Federal Procurement Data System (FPDS) Individual Contract Action Report* (See 4.602(c).)

(b) *SF 281 (REV. 10/88), Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less).* (See 4.602(c).)

[53 FR 43395, Oct. 26, 1988]

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

SF 26, Award/Contract, SF 1447, Solicitation/Contract, or OF 347, Order for Supplies. SF 26, prescribed in 53.214(a), SF 1447, prescribed in 53.215-1(g), and OF 347 (or an approved agency form), prescribed in 53.213(e), shall be used to place orders for paid advertisements within the dollar limitations and as otherwise specified in 5.503(c).

[54 FR 48998, Nov. 28, 1989]

53.206—53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

(a) *SF 1403 (REV. 9/88), Preaward Survey of Prospective Contractor (General).* SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) *SF 1404 (REV. 9/88), Preaward Survey of Prospective Contractor—Technical.* SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(c) *SF 1405 (REV. 9/88), Preaward Survey of Prospective Contractor—Production.* SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(d) *SF 1406 (REV. 9/88), Preaward Survey of Prospective Contractor—Quality Assurance.* SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(e) *SF 1407 (REV. 9/88), Preaward Survey of Prospective Contractor—Financial Capability.* SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(f) *SF 1408 (REV. 9/88), Preaward Survey of Prospective Contractor—Accounting System.* SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

[55 FR 25534, June 21, 1990]

53.210—53.212 [Reserved]

53.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18, Request for Quotation.* SF 18, prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers for small purchases, as specified in 13.107(a).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order-Invoice-Voucher.* SF 44 is prescribed for use in small purchases, as specified in 13.505-3.

(d) *SF 1165, Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.405(e).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services —Schedule Continuation.* OF's 347 and 348 (or approved agency forms) may be used as follows:

(1) To accomplish small purchases, as specified in 13.505-1(a)(2).

(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)). Pending the publication of a new edition of OF 347, the title and the effective date of FAR clause 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General (April 1984) in the block titled *Purchase Order Terms and Conditions* are revised to Contract Work Hours and Safety Standards Act—Overtime Compensation (Mar. 1986).

[48 FR 42637, Sept. 19, 1983, as amended at 51 FR 12294, Apr. 9, 1986]

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) *SF 26, Award/Contract.* SF 26, prescribed in 53.215-1(b), shall be used in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.407-1(d).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) *SF 33 (REV. 4/85). Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26.

(d) *SF 1447 (5/88), Solicitation/Contract.* SF 1447, prescribed in 53.215-1(g), shall be used in soliciting bids for supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201-9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) *SF 129 (REV. 10/83), Solicitation Mailing List Application.* SF 129 is prescribed for use in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(f) *SF 1409 (REV. 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers-Continuation. SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).*

(g) *OF 17 (REV. 10/83), Sealed Bid Label.* OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202-3(b).

(h) OF 336 (REV. 3/86), *Continuation Sheet.* OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201-2(b).

[48 FR 42637, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 27121, July 29, 1986; 52 FR 19805, May 27, 1987; 54 FR 29284, July 11, 1989; 54 FR 48998, Nov. 28, 1989]

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or small purchases):

(a) *SF 18 (REV. 10/83), Request For Quotation.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).

(b) *SF 26 (REV. 4/85), Award/Contract.* SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).

(c) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used for amending requests for proposals, and may be used for amending requests for quotations, as specified in 15.410.

(d) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), shall be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414.

(e) OF 336, *Continuation Sheet.* OF 336, prescribed in 53.214(g) may be used as a continuation sheet in solicitations, as specified in 15.406-2(b).

(f) *SF 129, Solicitation Mailing List Application.* SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(g) *SF 1447, Solicitation/Contract.* SF 1447 is prescribed for use in soliciting offers for supplies or services and for awarding contracts that result from the offers. It shall be used in connection with solicitations and contracts which use the simplified contract format (see 15.416) and may be used in place of the SF 26 or SF 33 with other solicitations (see 15.414(c)). Agencies may prescribe additional detailed instructions for use of the form.

[48 FR 42637, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 27121, July 29, 1986; 54 FR 48998, Nov. 28, 1989]

53.215-2 Price negotiation (SF's 1411, 1412).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data from offerors or contractors, as specified in 15.804:

(a) *SF 1411 (7/87), Contract Pricing Proposal Cover Sheet.* (See 15.804-6(b).)

(b) *SF 1412 (10/83), Claim for Exemption from Submission of Certified Cost or Pricing Data.* (See 15.804-3(e).)

[48 FR 42637, Sept. 19, 1983, as amended at 53 FR 17861, May 18, 1988]

53.216 Types of contracts.

53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.703(d)(2)(i).

53.217—53.218 [Reserved]

53.219 Small business and small disadvantaged business concerns.

The following standard forms are prescribed for use in reporting small business subcontracting data, as specified in part 19:

(a) *SF 294 (REV. 1/90), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV. 1/90), Summary Subcontract Report.* (See 19.704(a)(5).) Standard Form 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

[48 FR 42637, Sept. 19, 1983, as amended at 55 FR 25534, June 21, 1990]

53.220—53.221 [Reserved]

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) *SF 99 (DOL), Notice of Award of Contract.*

(c) SF 308 (DOL) (REV. 5/85), *Request for Wage Determination and Response to Request.* (See 22.404-3(a) and (b).)

(d) SF 1093 (GAO) (10/71), *Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.* (See 22.406-9(c)(1).)

(e) SF 1413 (REV. 6/89), *Statement and Acknowledgment* SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.406-5.

(f) Form SF 1444 (10/87), *Request for Authorization of Additional Classification and Rate.* (See 22.406-3(a) and 22.1019.)

(g) SF 1445 (10/87), *Labor Standards Interview.* (See 22.406-7(b).)

(h) SF 1446 (10/87), *Labor Standards Investigation Summary Sheet.* (See 22.406-8(d).)

(i) Form WH-347 (DOL), *Payroll (for Contractor's Optional Use).* (See 22.406-6(a).)

[48 FR 42637, Sept. 19, 1983, as amended at 49 FR 12997, Mar. 30, 1984; 53 FR 4948, Feb. 18, 1988; 53 FR 27468, July 20, 1988; 54 FR 48998, Nov. 28, 1989; 55 FR 38518, Sept. 18, 1990]

53.223—53.227 [Reserved]

53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in part 28:

(a) *SF 24 (REV. 1/90), Bid Bond.* (See 28.106-1.)

(b) *SF 25 (REV. 1/90), Performance Bond.* (See 28.106-1(b).)

(c) *SF 25-A (REV. 1/90), Payment Bond.* (See 28.106-3(c).)

(d) *SF 25-B (REV. 10/83), Continuation Sheet (For Standard Forms 24, 25, and 25-A).* (See 28.106-1(d).)

(e) *SF 28 (REV. 1/90), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).)

(f) *SF 34 (REV. 1/90), Annual Bid Bond.* (See 28.106-1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(g) *SF 35 (REV. 1/90), Annual Performance Bond.* (See 28.106-1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(h) *SF 273 (REV. 10/83), Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106-1(h) and 28.202-1(a)(4).)

(i) *SF 274 (REV. 10/83), Reinsurance Agreement for a Miller Act Payment Bond.* (See 28.106-1(i) and 28.202-1(a)(4).)

(j) *SF 275 (REV. 10/83), Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).)

(k) *SF 1414 (10/83), Consent of Surety.* (See 28.106-1(k).)

(l) *SF 1415 (REV. 11/87), Consent of Surety and Increase of Penalty.* (See 28.106-1(l).) SF 1415 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(m) *SF 1416 (REV. 1/90), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(n) *OF 90 (REV. 1/90), Release of Lien on Real Property.* (See 28.106-1(n) and 28.203-5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(o) *OF 91 (REV. 1/90), Release of Personal Property from Escrow.* (See 28.106-1(o) and 28.203-5(a).) OF 91 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

[48 FR 42637, Sept. 19, 1983, as amended at 53 FR 43395, Oct. 26, 1988; 54 FR 48998, Nov. 28, 1989; 55 FR 25534, June 21, 1990]

53.229 Taxes (SF's 1094, 1094-A).

SF 1094 (REV. 10/83), U.S. Tax Exemption Certificate, and SF 1094-A (REV. 10/83), Tax Exemption Certificates Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230—53.231 [Reserved]

53.232 Contract financing (SF 1443).

SF 1443 (10/82), Contractor's Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors' requests for progress payments, as specified in 32.503-1.

53.233—53.234 [Reserved]

53.235 Research and Development Contracting (SF 298).

SF 298 (2/89), Report Documentation Page. SF 298 is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in 35.010.

[55 FR 3890, Feb. 5, 1990]

53.236 Construction and architect-engineer contracts.

53.236-1 Construction (SF's 1417, 1420, 1442, and OF's 347, 1419, and 1419A).

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a) *SF 1417 (REV 12/88), Pre-Solicitation Notice (Construction Contract).* SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be $100,000 or more and may be used if the proposed contract is estimated to be less than $100,000, as specified in 36.701(a).

(b) *SF 1420 (10/83), Performance Evaluation—Construction Contracts.* SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).

(c)—(d) [Reserved]

(e) *SF 1442 (4/85), Solicitation, Offer and Award (Construction, Alteration, or Repair).* SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the small purchase limitation for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the small purchase limitation), as specified in 36.701(b).

(f) *OF 347, Order for Supplies or Services.* OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts of $10,000 or less for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).

(g) *OF 1419 (11/88), Abstract of Offers-Construction, and OF 1419A (11/88), Abstract of Offers-Construction, Continuation Sheet.* OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal evaluation information), as specified in 36.701(d).

[48 FR 42637, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 53 FR 4948, Feb. 18, 1988; 54 FR 29284, July 11, 1989]

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (REV. 10/83), Architect-Engineer Contract.* SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). [Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.]

(b) *SF 254 (REV. 10/83), Architect-Engineer and Related Services Questionnaire.* SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1). Pending issuance of a new edition of the form, the definition *Architect-engineer and related services* is replaced by the following:

Architect-Engineer Services means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

(c) *SF 255 (REV. 10/83), Architect-Engineer and Related Services Questionnaire for Specific Project.* SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project. Pending issuance of a new edition of the form, the definition *Architect-engineer and related services* is replaced by the following:

Architect-Engineer Services means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

(d) *SF 1421 (10/83), Performance Evaluation (Architect-Engineer).* SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

[48 FR 42637, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 36972, Oct. 16, 1987]

53.237—53.241 [Reserved]

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(f).

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated, as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b), and (c) modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

53.244 [Reserved]

53.245 Government property.

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property).* (See 45.608-2(b)(2), 45.608-5(d)(1), and 45.608-8.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet).* (See 45.610-1(c).)

(c) SF 1423 (REV. 12/88), *Inventory Verification Survey.* (See 45.606-3(b).)

(d) *SF 1424 (REV. 7/89), Inventory Disposal Report.* (See 45.615.) SF 1424 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(e) [Reserved]

(f) *SF 1426 (REV. 7/89), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form).* (See 45.606 and 49.602-2(e).) Standard Form 1426 and Standard Form 1427 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(g) *SF 1428 (REV. 7/89), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B-Continuation Sheet.* (See 45.606 and 49.602-2(b).) Standard Form 1428 and Standard Form 1429 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(h) *SF 1430 (REV. 7/89), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* (See 45.606 and 49.602-2(c).) Standard Form 1430 and Standard Form 1431 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(i) *SF 1432 (REV. 7/89), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).* (See 45.606 and 49.602-2(d).) Standard Form 1432 and Standard Form 1433 are authorized for local reproduction and copies are furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(j) *SF 1434 (REV. 7/89), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).* (See 45.606 and 49.602-2(e).) Standard Form 1434 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

[48 FR 42637, Sept. 19, 1983, as amended at 54 FR 34758, Aug. 21, 1989; 55 FR 3890, Feb. 5, 1990]

53.246 [Reserved]

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 [Reserved]

53.249 Termination of contracts.

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

(1) *SF 1034 (GAO), Public Voucher for Purchases and Services Other Than Personal.* (See 49.302(a).)

(2) *SF 1435 (REV. 7/89), Settlement Proposal (Inventory Basis).* (See 49.602-1(a).) Standard Form 1435 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(3) *SF 1436 (REV. 7/89), Settlement Proposal (Total Cost Basis).* (See 49.602-1(b).) Standard Form 1436 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(4) *SF 1437 (REV. 7/89), Settlement Proposal for Cost-Reimbursement Type Contracts.* (See 49.602-1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(5) *SF 1438 (REV. 7/89), Settlement Proposal (Short Form).* (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(6) *SF 1439 (REV. 7/89), Schedule of Accounting Information.* (See 49.602-3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(7) *SF 1440 (REV. 7/89), Application for Partial Payment.* (See 49.602-4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

[48 FR 42637, Sept. 19, 1983, as amended at 55 FR 3890, Feb. 5, 1990]

53.250 [Reserved]

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(e), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

Subpart 53.3—Illustrations of Forms

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

53.301 Standard forms.

This section illustrates the standard forms that are specified by the FAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the standard form numbers (e.g., Standard Form 18 appears as 53.301-18).

53.301-18—53.301-1443 Illustration of standard forms.

Editorial Note: The forms appearing in sections 53.301-18 through 53.301-1447 follow the text of this subpart.

53.302 Optional forms.

This section illustrates the optional forms that are specified by the FAR for use in acquisitions. The numbering system is as indicated in 53.301.

53.302-17—53.302-348 Illustration of optional forms.

Editorial Note: The forms appearing in sections 53.302-17 through 53.302-1419A follow the text of this subpart.

53.303 Agency forms.

This section illustrates agency forms that are specified by the FAR for use in acquisitions. The forms are arranged numerically by agency. The numbering system is as indicated in 53.301.

53.303-254—53.303-347 Illustration of agency forms.

EDITORIAL NOTE: The forms appearing in sections 53.303-DD-254 through 53.303-WH-347 follow the text of this subpart.

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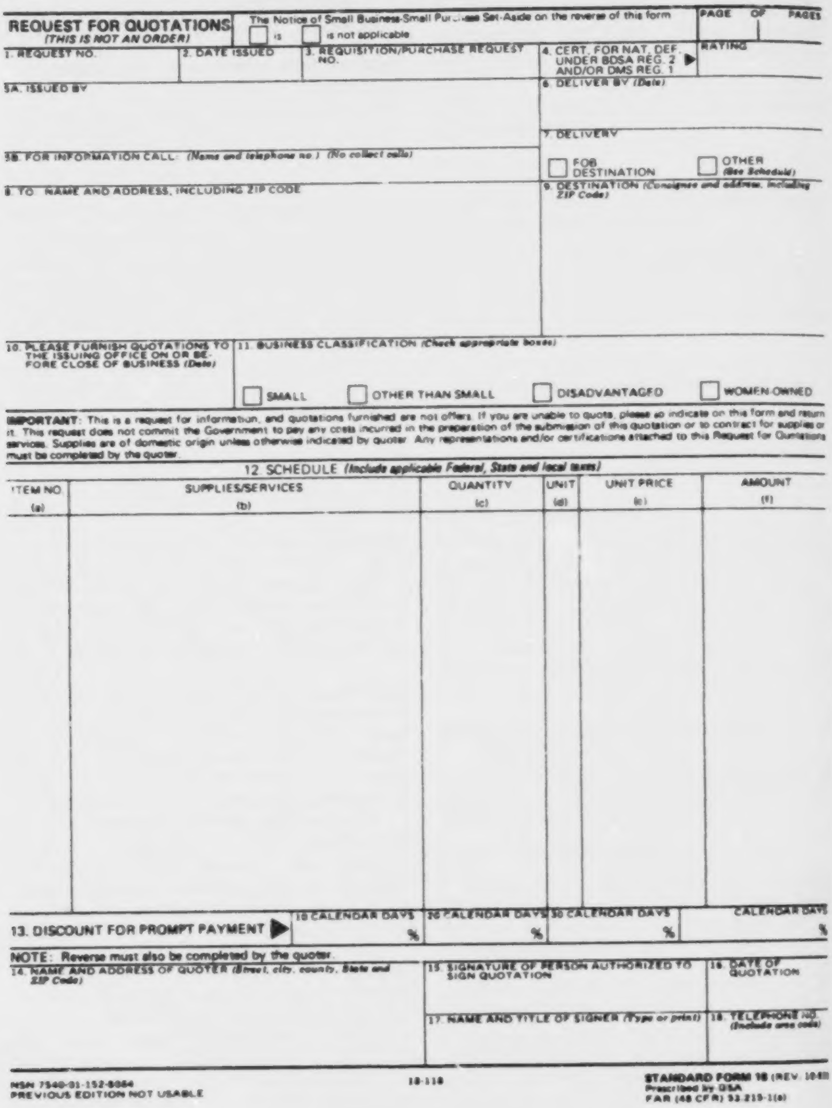
53.301–18 Standard Form 18, Request for Quotations.



REQUEST FOR QUOTATIONS *(THIS IS NOT AN ORDER)*	The Notice of Small Business-Small Purchase Set-Aside on the reverse of this form ☐ is ☐ is not applicable			PAGE OF PAGES
1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶	RATING
5A. ISSUED BY			6. DELIVER BY *(Date)*	
			7. DELIVERY	
5B. FOR INFORMATION CALL: *(Name and telephone no.) (No collect calls)*			☐ FOB DESTINATION	☐ OTHER *(See Schedule)*
8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE			9. DESTINATION *(Consignee and address, including ZIP Code)*	
10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE ON OR BEFORE CLOSE OF BUSINESS *(Date)*	11. BUSINESS CLASSIFICATION *(Check appropriate boxes)* ☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED			

IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.

12. SCHEDULE *(Include applicable Federal, State and local taxes)*

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)

13. DISCOUNT FOR PROMPT PAYMENT ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

NOTE: Reverse must also be completed by the quoter.

14. NAME AND ADDRESS OF QUOTER *(Street, city, county, State and ZIP Code)*	15. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	16. DATE OF QUOTATION
	17. NAME AND TITLE OF SIGNER *(Type or print)*	18. TELEPHONE NO. *(Include area code)*

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

18-118

STANDARD FORM 18 (REV. 10-8
Prescribed by GSA
FAR (48 CFR) 53.215-1(a)

REPRESENTATIONS, CERTIFICATIONS, AND PROVISIONS

The following representation applies when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

52.219-1 SMALL BUSINESS CONCERN REPRESENTATION (Apr 84)

The quoter represents and certifies as part of its quotation that it ☐ is, ☐ is not a small business concern and that ☐ all, ☐ not all supplies to be furnished will be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

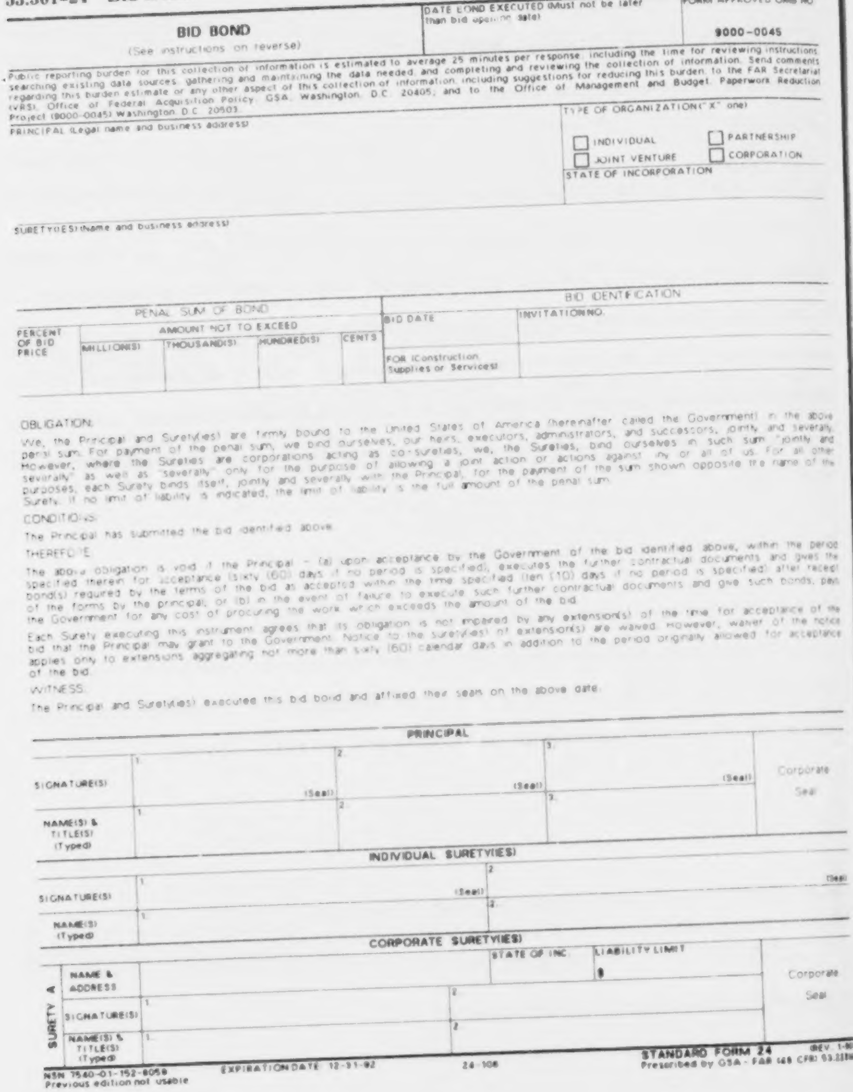
The following provision is applicable if required on the face of the form.

52.219-2 Notice of Small Business-Small Purchase Set-Aside (Apr 84)

Quotations under this acquisition are solicited from small business concerns only. Any acquisition resulting from this solicitation will be from a small business concern. Quotations received from concerns that are not small businesses shall not be considered and shall be rejected.

STANDARD FORM 18 BACK (REV. 10-83)

53.301-24 Bid Bond.



BID BOND (See instructions on reverse)	DATE BOND EXECUTED (Must not be later than bid opening date)	FORM APPROVED OMB NO 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045) Washington D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION
	STATE OF INCORPORATION
SURETY(IES) (Name and business address)	

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR (Construction, Supplies or Services)	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

NSN 7540-01-152-8058
Previous edition not usable

EXPIRATION DATE 12-31-92

24-108

STANDARD FORM 24 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.228

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed __________ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

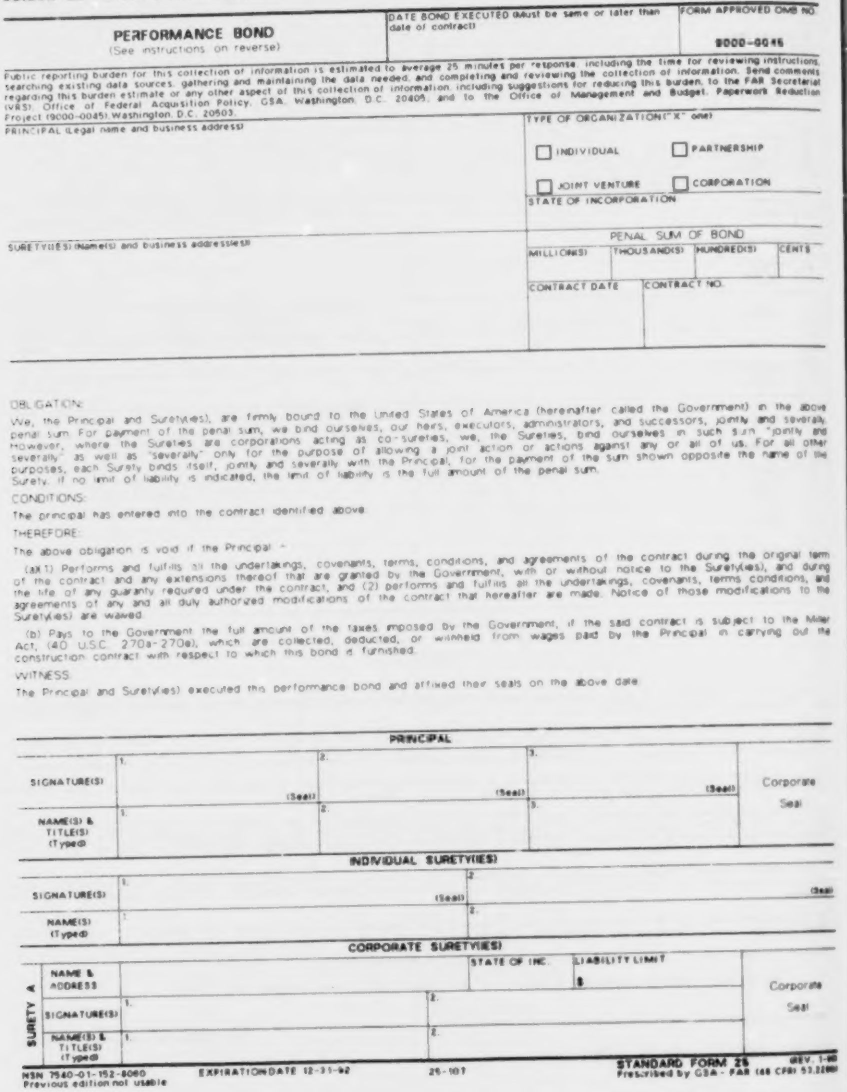
6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

STANDARD FORM 24 (REV. 1-90) **BACK**

[55 FR 25535, June 21, 1990]

53.301-25 Performance Bonds.



PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION			
	STATE OF INCORPORATION			
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE	CONTRACT NO.		

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

NSN 7540-01-152-8080
Previous edition not usable

EXPIRATION DATE 12-31-92

25-107

STANDARD FORM 25 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

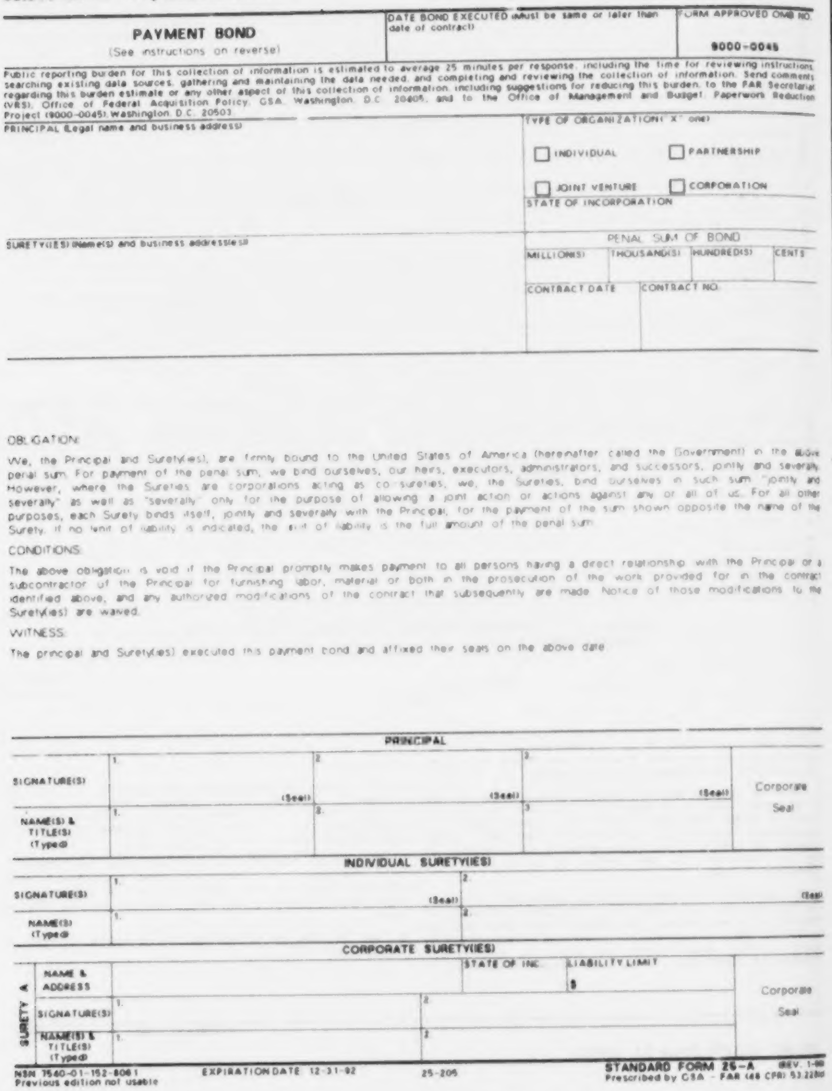
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 25 (REV. 1-90) BACK

[55 FR 25537, June 21, 1990]

53.301-25-A Payment Bond.



PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION			
	STATE OF INCORPORATION			
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE	CONTRACT NO.		

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

NSN 7540-01-152-8061
Previous edition not usable

EXPIRATION DATE 12-31-92

25-205

STANDARD FORM 25-A (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.228(d)

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

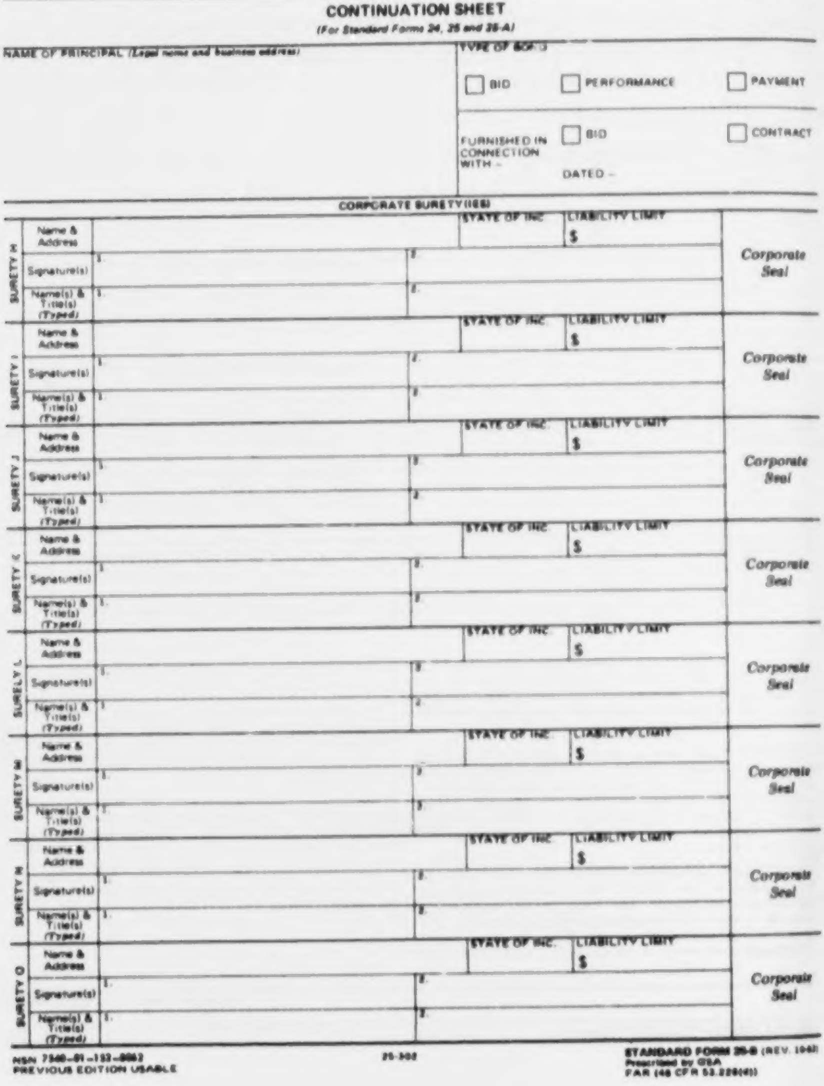
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 25-A (REV. 1-90) BACK

[55 FR 25539, June 21, 1990]

53.301-25-B Standard Form 25-B, Continuation Sheet (For Standard Forms, 24, 25, and 25-A).



CONTINUATION SHEET

(For Standard Forms 24, 25 and 25-A)

NAME OF PRINCIPAL *(Legal name and business address)*	TYPE OF BOND ☐ BID ☐ PERFORMANCE ☐ PAYMENT
	FURNISHED IN CONNECTION WITH – ☐ BID ☐ CONTRACT DATED –

CORPORATE SURETY(IES)

SURETY H	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY I	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY J	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY K	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURELY L	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY M	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY N	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			
SURETY O	Name & Address			STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.			
	Name(s) & Title(s) *(Typed)*	1.	2.			

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25-302

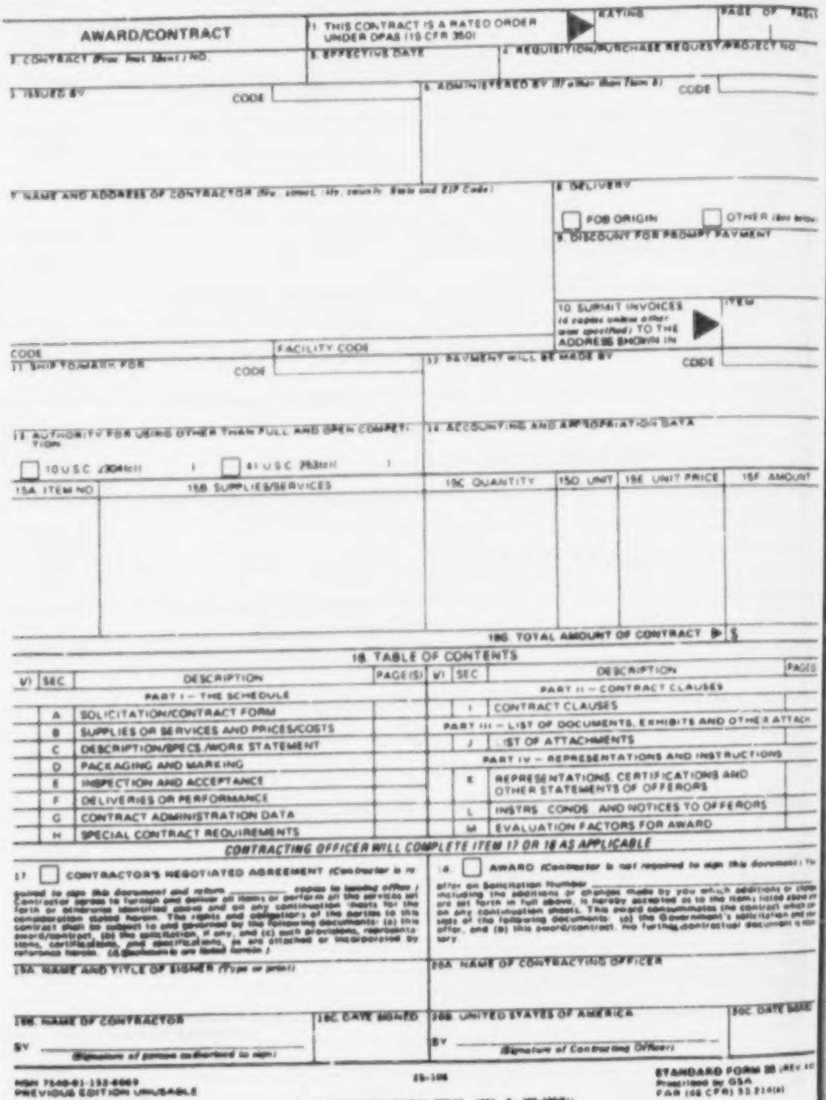
STANDARD FORM 25-B (REV. 10-83)
Prescribed by GSA
FAR (48 CFR 53.228(d))

CORPORATE SURETY(IES) *(Continued)*

SURETY P	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY Q	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY R	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY S	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY T	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY U	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY V	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY W	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY X	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY Y	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

STANDARD FORM 25-B BACK (REV. 10-83)

53.301-26 Standard Form 26, Award/Contract.



AWARD/CONTRACT

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶ RATING

PAGE OF PAGE

2. CONTRACT (Proc. Inst. Ident.) NO.

3. EFFECTIVE DATE

4. REQUISITION/PURCHASE REQUEST/PROJECT NO.

5. ISSUED BY CODE

6. ADMINISTERED BY (If other than Item 5) CODE

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)

CODE FACILITY CODE

8. DELIVERY

☐ FOB ORIGIN ☐ OTHER (See belo

9. DISCOUNT FOR PROMPT PAYMENT

10. SUBMIT INVOICES (4 copies unless other-wise specified) TO THE ADDRESS SHOWN IN ▶ ITEM

11. SHIP TO/MARK FOR CODE

12. PAYMENT WILL BE MADE BY CODE

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

14. ACCOUNTING AND APPROPRIATION DATA

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT

15G. TOTAL AMOUNT OF CONTRACT ▶ $

16. TABLE OF CONTENTS

(✓)	SEC.	DESCRIPTION	PAGE(S)	(✓)	SEC.	DESCRIPTION	PAGES
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is re-

18. ☐ AWARD (Contractor is not required to sign this document.)

19A. NAME AND TITLE OF SIGNER (Type or print)

20A. NAME OF CONTRACTING OFFICER

19B. NAME OF CONTRACTOR

BY ____________________
(Signature of person authorized to sign)

19C. DATE SIGNED

20B. UNITED STATES OF AMERICA

BY ____________________
(Signature of Contracting Officer)

20C. DATE SIGNE

NSN 7540-01-152-8069
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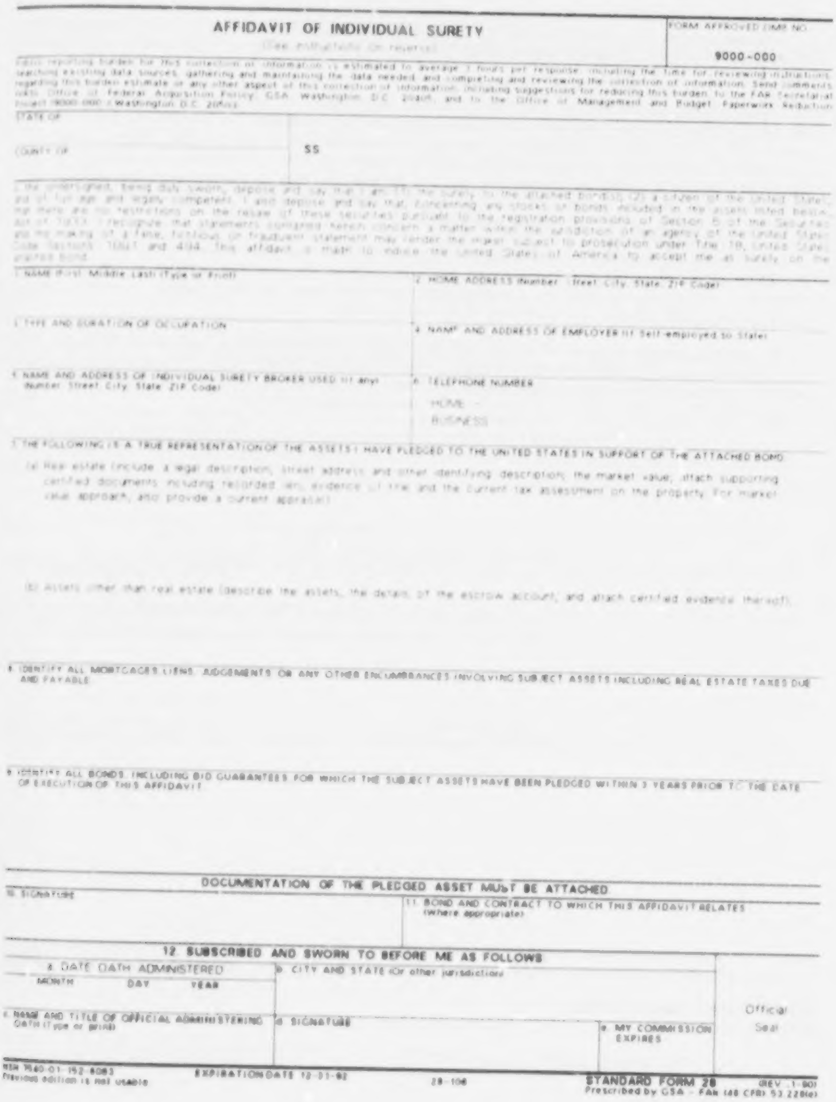
26-106

STANDARD FORM 26 (REV.
Prescribed by GSA
FAR (48 CFR) 53.214(a)

☆ U.S. GOVERNMENT PRINTING OFFICE

[50 FR 1749, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

53.301-28 Affidavit of Individual Surety.



AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse)

FORM APPROVED OMB NO.
9000-000

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-000), Washington, D.C. 20503.

STATE OF

COUNTY OF SS

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)

2. HOME ADDRESS (Number, Street, City, State, ZIP Code)

3. TYPE AND DURATION OF OCCUPATION

4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)

5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)

6. TELEPHONE NUMBER
HOME -
BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND

(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment on the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS

a. DATE OATH ADMINISTERED
MONTH DAY YEAR

b. CITY AND STATE (Or other jurisdiction)

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)

d. SIGNATURE

e. MY COMMISSION EXPIRES

Official Seal

NSN 7540-01-152-8083
Previous edition is not usable

EXPIRATION DATE 12-31-92

28-106

STANDARD FORM 28 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1 Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond (See 48 CFR 28.203, 53.228(e)) The surety shall have the completed form notarized

2 No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports

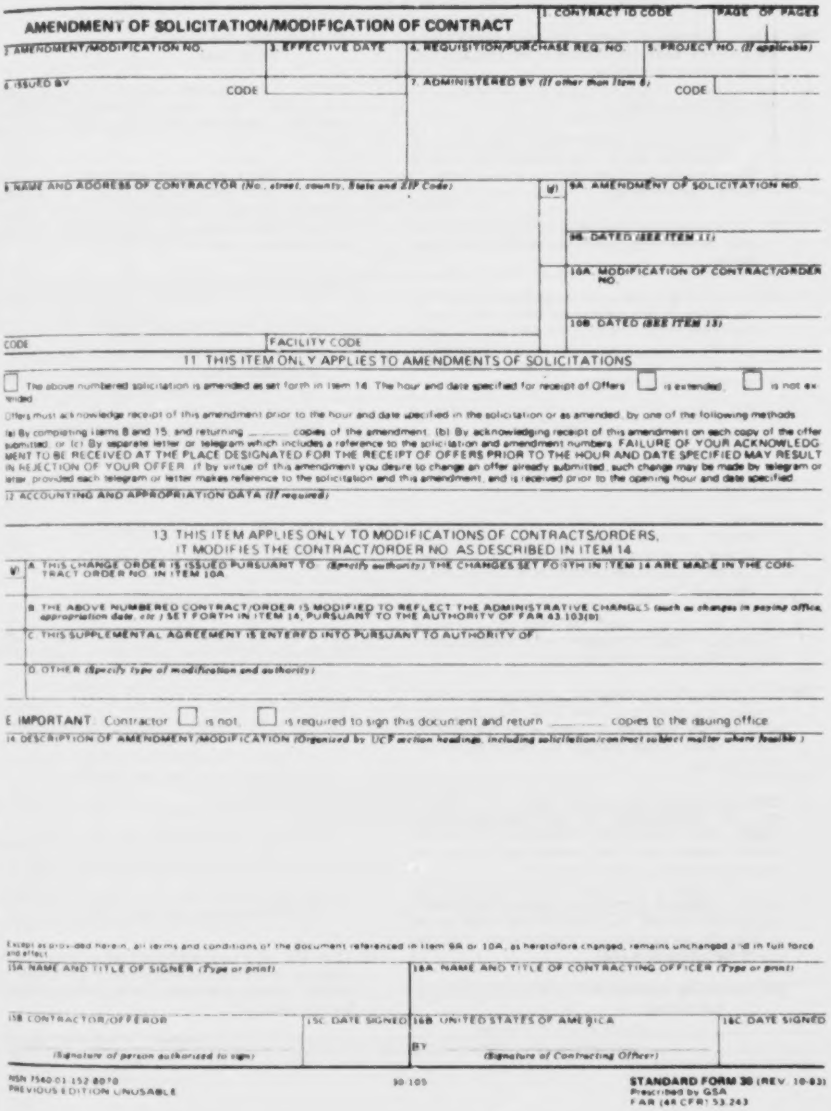
3 United States citizenship is a requirement for individual sureties However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations - any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, or any other territory or possession of the United States

4 All signatures on the affidavit submitted must be originals Affidavits bearing reproduced signatures are not acceptable An authorized person shall sign the bond Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved

STANDARD FORM 28 (REV. 1-90) BACK

[55 FR 25541, June 21, 1990]

53.301-30 Standard Form 30, Amendment of Solicitation/Modification of Contract.



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
6. ISSUED BY CODE		7. ADMINISTERED BY *(If other than Item 6)* CODE	

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*		(✓)	9A. AMENDMENT OF SOLICITATION NO.
			9B. DATED *(SEE ITEM 11)*
			10A. MODIFICATION OF CONTRACT/ORDER NO.
CODE	FACILITY CODE		10B. DATED *(SEE ITEM 13)*

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning ______ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(✓)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return ______ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*		16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*	
15B. CONTRACTOR/OFFEROR *(Signature of person authorized to sign)*	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY *(Signature of Contracting Officer)*	16C. DATE SIGNED

NSN 7540-01-152-8070
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30-105

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

(b) Item 3 (Effective date).

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.

(3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

(c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

(d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

(e) Items 9, (Amendment of Solicitation No.–Dated), and 10, (Modification of Contract/Order No.–Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.

(f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries:

(1) Accounting classification ....
Net increase $..............................

(2) Accounting classification ....
Net decrease $..............................

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".

(g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)

(h) Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document.

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:

(i) Total contract price increased by $ ....

(ii) Total contract price decreased by $ ....

(iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to –

(i) A reference to the letter determination; and

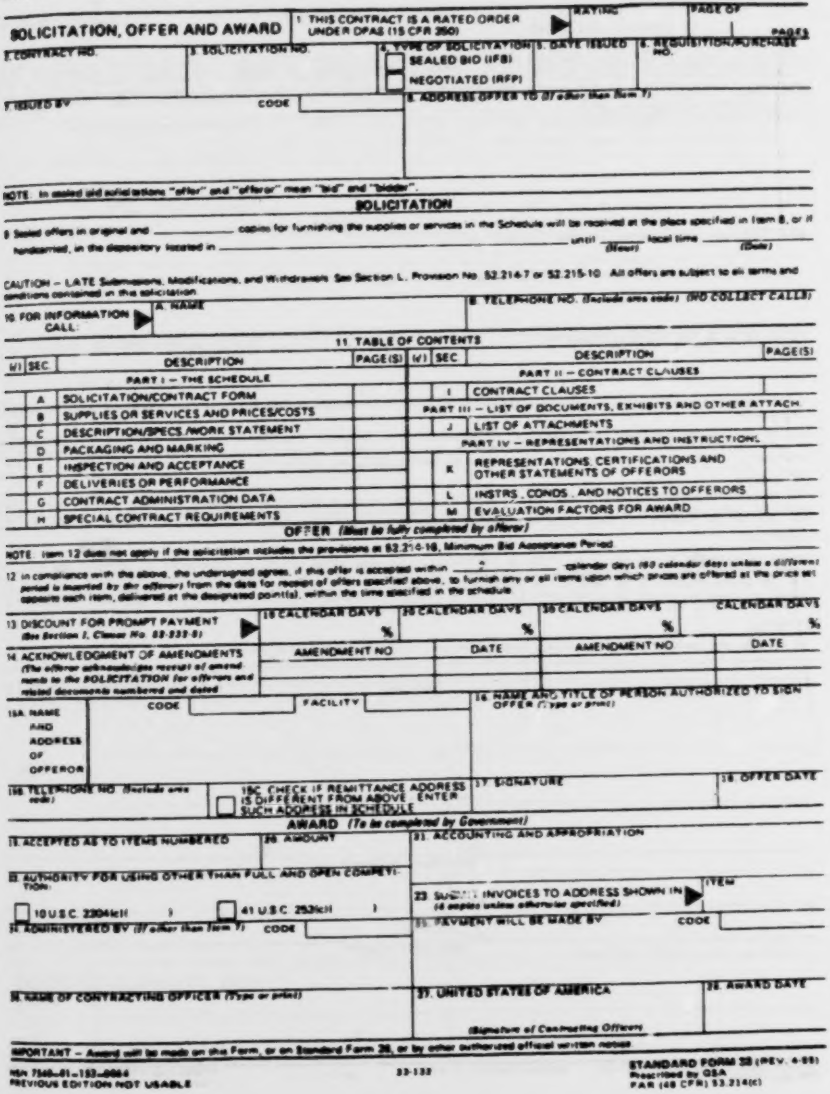
(ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

(i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.

STANDARD FORM 30 BACK (REV. 10-83)

53.301-33 Standard Form 33, Solicitation, Offer and Award.



SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶ RATING

PAGE OF PAGES

2. CONTRACT NO.

3. SOLICITATION NO.

4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)

5. DATE ISSUED

6. REQUISITION/PURCHASE NO.

7. ISSUED BY CODE

8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and ________ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in ________ until ____ *(Hour)* local time ____ *(Date)*

CAUTION — LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶ A. NAME B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(✓)	SEC.	DESCRIPTION	PAGE(S)	(✓)	SEC.	DESCRIPTION	PAGE(S)
		PART I — THE SCHEDULE				PART II — CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III — LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV — REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within ________ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52-232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR CODE FACILITY

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*

15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE. ENTER SUCH ADDRESS IN SCHEDULE.

17. SIGNATURE

18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED

20. AMOUNT

21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)* ▶ ITEM

24. ADMINISTERED BY *(If other than Item 7)* CODE

25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*

27. UNITED STATES OF AMERICA

(Signature of Contracting Officer)

28. AWARD DATE

IMPORTANT — Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

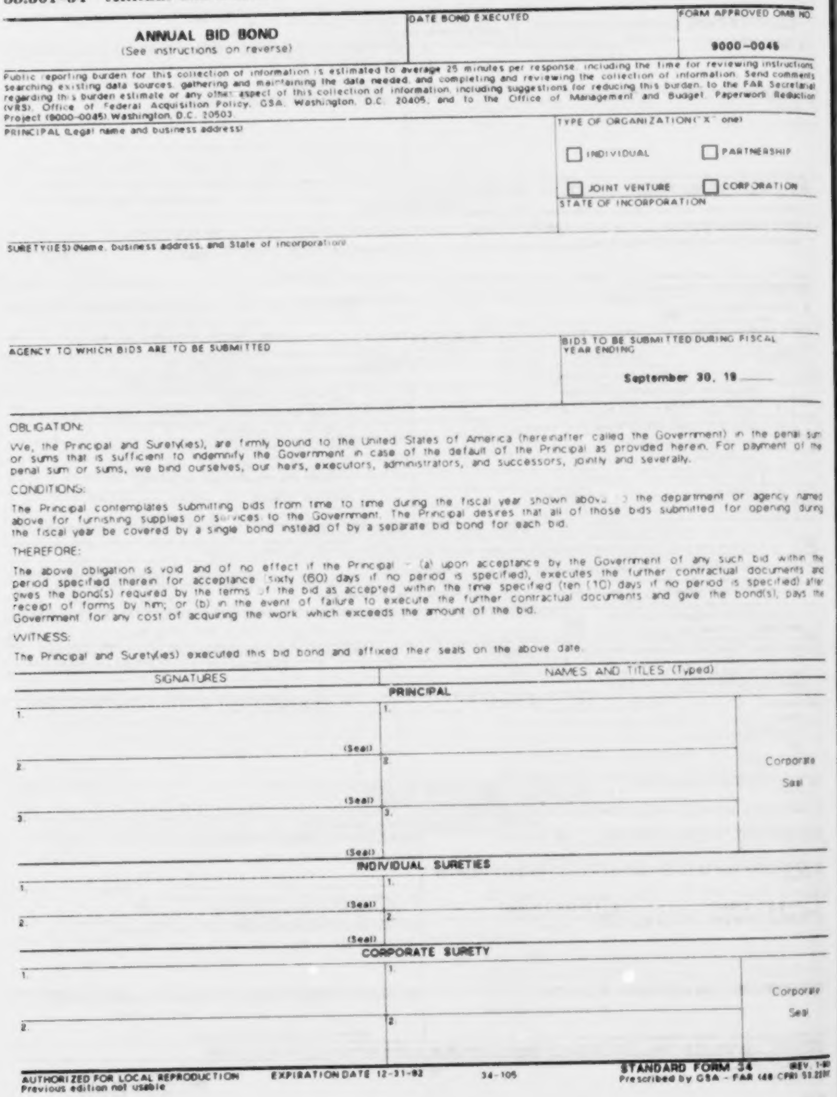
33-132

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

53-22

[50 FR 1750, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

53.301-34 Annual Bid Bond.



ANNUAL BID BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secreta (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045) Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION
	STATE OF INCORPORATION
SURETY(IES) (Name, business address, and State of incorporation)	
AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING **September 30, 19____**

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE:

The above obligation is void and of no effect if the Principal - (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable
EXPIRATION DATE 12-31-92
34-105
STANDARD FORM 34 (REV. 1-9
Prescribed by GSA - FAR (48 CFR) 53.228

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

STANDARD FORM 34 (REV. 1-90) BACK

[55 FR 25543, June 21, 1990]

53.301-35 Annual Performance Bond.

ANNUAL PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instruction searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretaria (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reductio Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION
	STATE OF INCORPORATION
SURETY(IES) (Name, business address, and State of incorporation)	PENAL SUM OF BOND MILLION(S) THOUSAND(S) HUNDRED(S) CENTS
	FISCAL YEAR ENDING **September 30, 19____**
AGENCY REPRESENTING THE GOVERNMENT	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Governmen department or agency shown above, for furnishing supplies or services to the government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.

THEREFORE:

The above obligation is void if the Principal — (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government, with or withou notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, th subsequently are made. Notice of those modifications to the surety(ies) is waived.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

EXPIRATION DATE 12-31-92

35-109

STANDARD FORM 35 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.228

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will requira the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

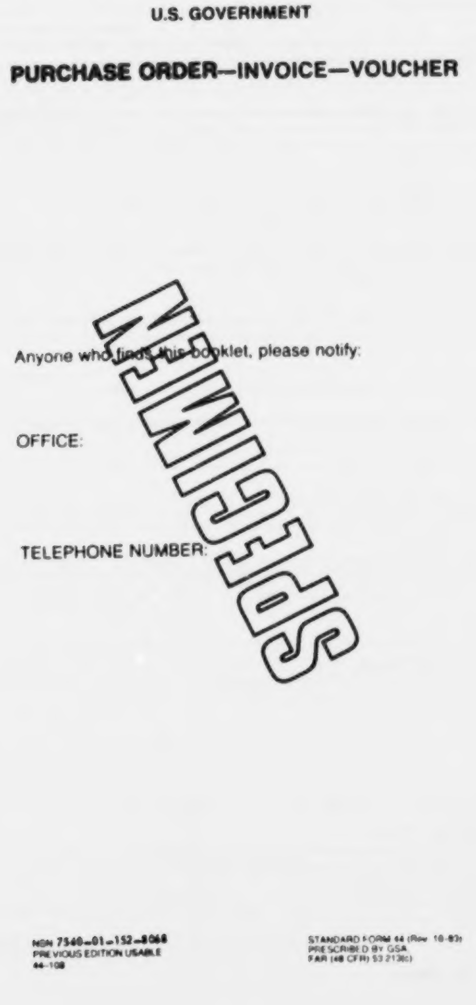
5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

STANDARD FORM 35 (REV. 1-90) BACK

[55 FR 25545, June 21, 1990]

53.301-44 **Standard Form 44, Purchase Order—Invoice—Voucher.**



U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

SPECIMEN

Anyone who finds this booklet, please notify:

OFFICE:

TELEPHONE NUMBER:

NSN 7540-01-152-8068
PREVIOUS EDITION USABLE
44-108

STANDARD FORM 44 (Rev. 10-83)
PRESCRIBED BY GSA
FAR (48 CFR) 53.213(c)

INSTRUCTIONS

(This form is for official Government use only)

1. Filling in the Form

(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. SELLER'S NAME AND ADDRESS MUST BE PRINTED.

(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.

(c) Enter project reference or other identifying description in space captioned "PURPOSE." Also, enter proper accounting information, if known.

2. Distributing Copies

Copy No. 1—Give to seller for use as the invoice or as an attachment to his commercial invoice.

Copy No. 2—Give to seller for use as a record of the order.

Copy No. 3—

(1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.

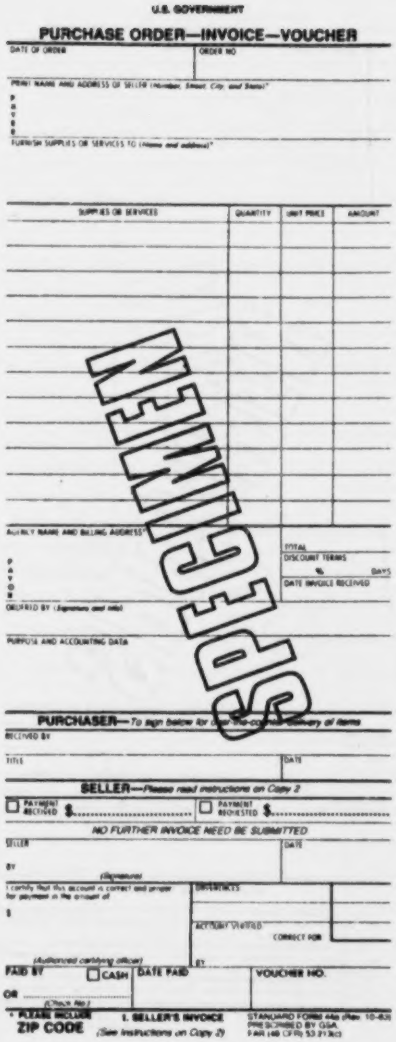
(2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.)

Copy No. 4—Retain in the book, unless otherwise instructed.

3. When Paying Cash at Time of Purchase

(a) Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.

(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instructions pertaining to handling receipts for cash payment.



U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER *(Number, Street, City, and State)**

P
A
Y
E
E

FURNISH SUPPLIES OR SERVICES TO *(Name and address)**

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS*

P
A
Y
O
R

TOTAL

DISCOUNT TERMS % DAYS

DATE INVOICE RECEIVED

ORDERED BY *(Signature and title)*

PURPOSE AND ACCOUNTING DATA

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $........................ ☐ PAYMENT REQUESTED $........................

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY

(Signature)

I certify that this account is correct and proper for payment in the amount of

$

(Authorized certifying officer)

DIFFERENCES

ACCOUNT VERIFIED

CORRECT FOR

BY

PAID BY ☐ CASH | DATE PAID | VOUCHER NO.

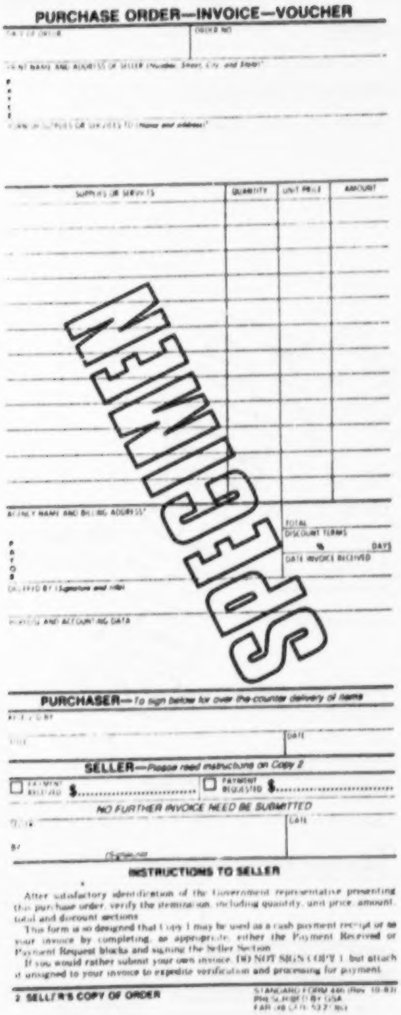
OR ....

(Check No.)

* PLEASE INCLUDE **ZIP CODE**

1. SELLER'S INVOICE *(See instructions on Copy 2)*

STANDARD FORM 44a (Rev. 10-83)
PRESCRIBED BY GSA
FAR (48 CFR) 53.213(c)



U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER	ORDER NO.

PRINT NAME AND ADDRESS OF SELLER *(Number, Street, City, and State)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO *(Name and address)*

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS

PAYOR

TOTAL

DISCOUNT TERMS % DAYS

DATE INVOICE RECEIVED

ORDERED BY *(Signature and title)*

PURPOSE AND ACCOUNTING DATA

SPECIMEN

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE

DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $............................

☐ PAYMENT REQUESTED $............................

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER

DATE

BY *(Signature)*

INSTRUCTIONS TO SELLER

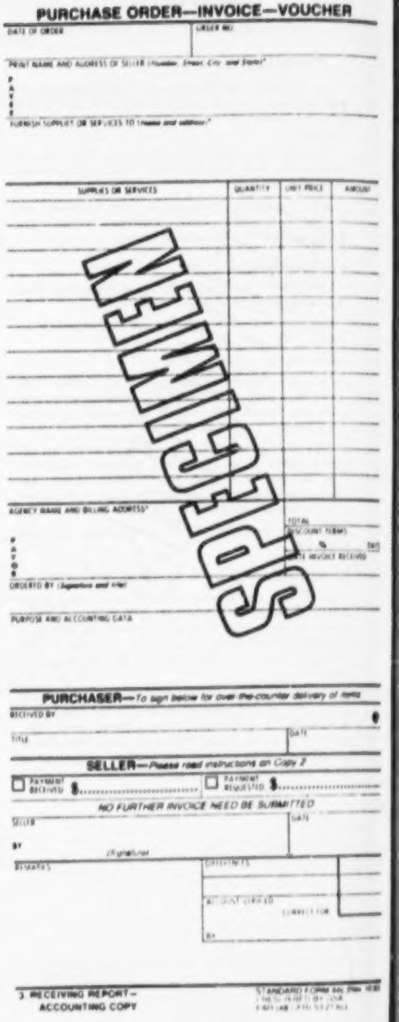
After satisfactory identification of the Government representative presenting this purchase order, verify the itemization, including quantity, unit price, amount, total and discount sections.

This form is so designed that Copy 1 may be used as a cash payment receipt or as your invoice by completing, as appropriate, either the Payment Received or Payment Request blocks and signing the Seller Section.

If you would rather submit your own invoice, DO NOT SIGN COPY 1 but attach it unsigned to your invoice to expedite verification and processing for payment.

2 SELLER'S COPY OF ORDER

STANDARD FORM 44b (Rev. 10-83)
PRESCRIBED BY GSA
FAR (48 CFR) 53.213(c)



U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER	ORDER NO.

PRINT NAME AND ADDRESS OF SELLER *(Number, Street, City, and State)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO *(Name and address)*

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS

PAYOR

TOTAL

DISCOUNT TERMS % DAYS

DATE INVOICE RECEIVED

ORDERED BY *(Signature and title)*

PURPOSE AND ACCOUNTING DATA

SPECIMEN

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE

DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $............................

☐ PAYMENT REQUESTED $............................

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER

DATE

BY *(Signature)*

REMARKS

DIFFERENCES

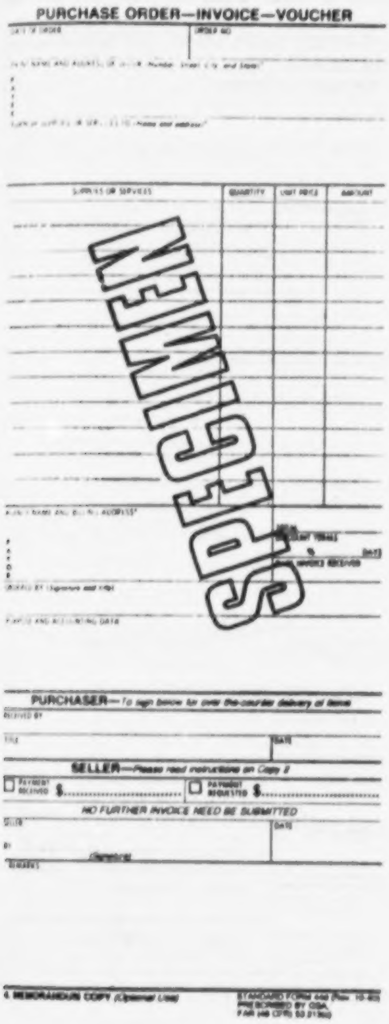
ACCOUNT VERIFIED

CORRECT FOR

BY

3 RECEIVING REPORT— ACCOUNTING COPY

STANDARD FORM 44c (Rev. 10-83)
PRESCRIBED BY GSA
FAR (48 CFR) 53.213(c)



U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

SPECIMEN

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $.................... ☐ PAYMENT REQUESTED $....................

NO FURTHER INVOICE NEED BE SUBMITTED

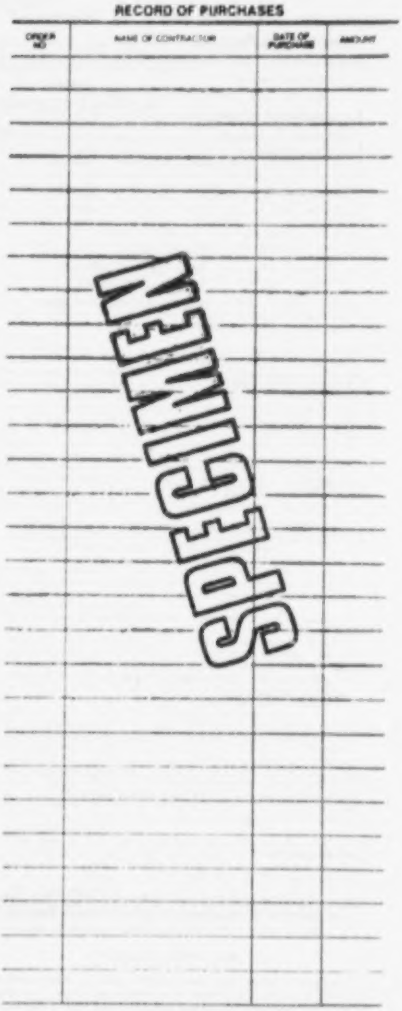
SELLER | DATE

BY

(Signature)

4. MEMORANDUM COPY *(Optional Use)*

STANDARD FORM 44 (Rev. 10-83)
PRESCRIBED BY GSA,
FAR (48 CFR) 53.213(c)

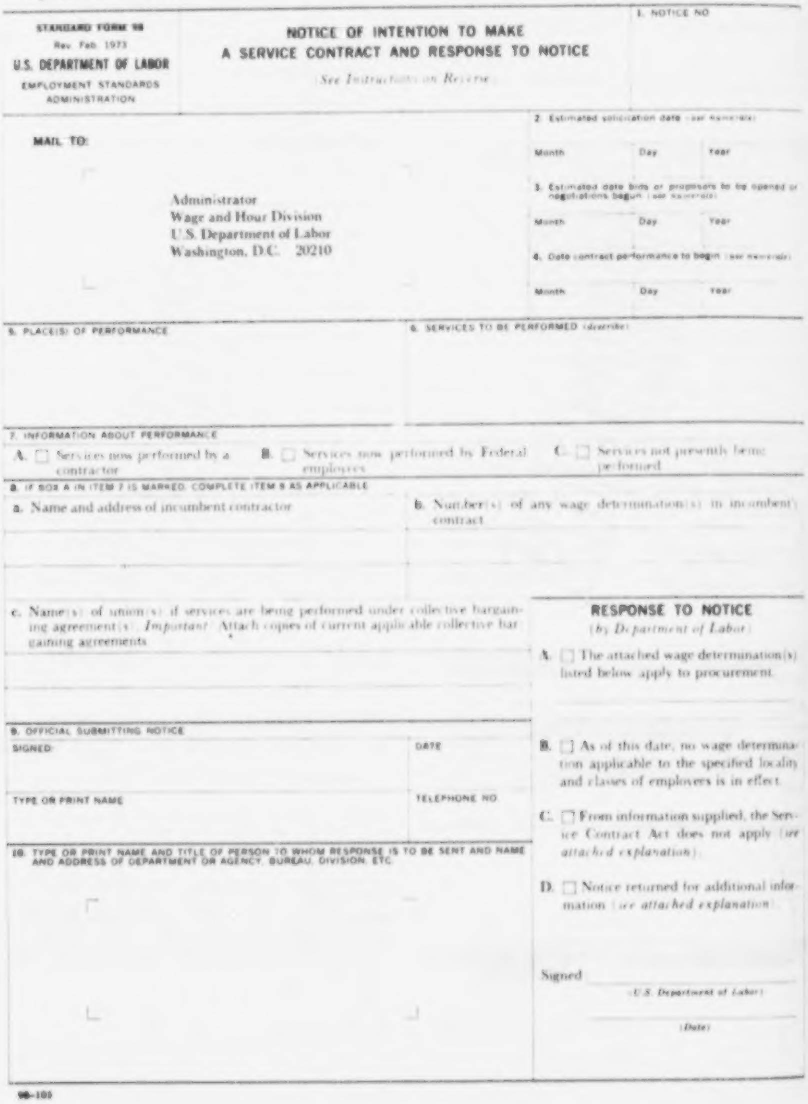


RECORD OF PURCHASES

ORDER NO.	NAME OF CONTRACTOR	DATE OF PURCHASE	AMOUNT

SPECIMEN

53.301-98 Standard Form 98, Notice of Intention of Make a Service Contract and Response to Notice.



STANDARD FORM 98
Rev. Feb. 1973
U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS
ADMINISTRATION

NOTICE OF INTENTION TO MAKE
A SERVICE CONTRACT AND RESPONSE TO NOTICE
(See Instructions on Reverse)

1. NOTICE NO

MAIL TO:

Administrator
Wage and Hour Division
U.S. Department of Labor
Washington, D.C. 20210

2. Estimated solicitation date (see numerals)

Month	Day	Year

3. Estimated date bids or proposals to be opened or negotiations begun (see numerals)

Month	Day	Year

4. Date contract performance to begin (see numerals)

Month	Day	Year

5. PLACE(S) OF PERFORMANCE

6. SERVICES TO BE PERFORMED (describe)

7. INFORMATION ABOUT PERFORMANCE

A. ☐ Services now performed by a contractor
B. ☐ Services now performed by Federal employees
C. ☐ Services not presently being performed

8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE

a. Name and address of incumbent contractor

b. Number(s) of any wage determination(s) in incumbent's contract

c. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). *Important:* Attach copies of current applicable collective bargaining agreements

9. OFFICIAL SUBMITTING NOTICE

SIGNED:

DATE

TYPE OR PRINT NAME

TELEPHONE NO

10. TYPE OR PRINT NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT AND NAME AND ADDRESS OF DEPARTMENT OR AGENCY, BUREAU, DIVISION, ETC.

RESPONSE TO NOTICE
(by Department of Labor)

A. ☐ The attached wage determination(s) listed below apply to procurement.

B. ☐ As of this date, no wage determination applicable to the specified locality and classes of employees is in effect.

C. ☐ From information supplied, the Service Contract Act does not apply (*see attached explanation*).

D. ☐ Notice returned for additional information (*see attached explanation*).

Signed
(U.S. Department of Labor)

(Date)

98-101

GENERAL EXPLANATION

The amended Service Contract Act requires the Secretary of Labor to issue wage determinations applicable to employees engaged in the performance of service contracts in excess of $2,500. Standard Form 98, Notice of Intention to Make a Service Contract, with Attachment A, provides an orderly procedure for a contracting agency to request such a wage determination and for the Department of Labor to respond. Any questions as to whether a notice is required in a particular procurement situation should be resolved by reference to Title 29, Part 4, Code of Federal Regulations, or by submission of the question to the Department of Labor.

Under normal circumstances the Department of Labor will respond to a notice within 30 days of receipt. If there is urgent need for more expeditious handling, this should be explained when the notice is submitted. In the event the necessary response is not received by the contracting agency on a timely basis, the Department of Labor should be contacted.

In any case where section 4(c) of the Act requires adherence to compensation provisions of a collective bargaining agreement applicable under a predecessor contract and the agency desires to request a hearing on the issue of substantial variance between the wages and fringe benefits provided under such agreement and those prevailing in the locality, the request should be submitted with the notice of intent, in accordance with the provisions of 29 CFR 4.10, and sufficiently far in advance of the need for the wage determination to allow time for appropriate action as provided in that section of the regulations.

The notice is divided along functional lines: (1) that part which must be completed by the contracting agency, Items 2 through 10 of the basic form and Items 11 through 14 of the attachment; and (2) the Response to Notice to be completed by the Department of Labor. The basic form and its attachment are provided in quadruplicate sets with carbon inserts. The original and two copies of the basic form and of each set of attachments used (with snap-out carbons removed and the forms fastened together) are to be sent to the address preprinted on the basic form. One copy of the basic form and one copy of the attachment are to be retained by the agency.

INSTRUCTIONS—AGENCY PORTION OF NOTICE

Entries on Basic Form

Item 1—This number is preprinted on the basic form for identification and control purposes. Refer to this number when contacting the Department of Labor about the notice.

Item 2—Enter the estimated solicitation date.

Item 3—Enter the date the bids or proposals are expected to be opened or the negotiations started.

Item 4—Enter the date contract performance is expected to begin.

Item 5—The entry as to place of performance depends on a variety of factors. If the place of performance is fixed, as with a contract for janitorial services at a particular installation, enter the appropriate city, county and State. If performance is to be at several known places, attach a list. If the contract is for transportation services between points, enter the city, county and State of origin and of destination. If the place of performance may be anywhere, depending on who is awarded the contract (as, for example, certain laundry contracts), enter "unknown." If necessary for clarity, attach a brief explanation of the entry in Item 5.

Item 6—Describe the services to be performed in such a manner that it will be clear what type or types of services are called for by the contract. In many instances simple entries will suffice: "Janitorial services at Headquarters Building, Fort Sill," "Food service and kitchen police service at Enlisted Mess, Camp A. P. Hill," "Laundry and drycleaning services for Base Hospital, Eglin AFB," "Garbage collection at Ft. Hood." Unusual types of services must be described in more detail.

Item 7—Mark the appropriate box.

Item 8—It is very important under the amended Service Contract Act that appropriate entries be made in Item 8 if Box A of Item 7 has been marked.

- *a.* Enter the name and address of the incumbent contractor.
- *b.* Enter the number(s) of any wage determination(s) made part of the incumbent's contract. For example: 71-69 (Rev. 3) and 69-43 (Rev. 4).
- *c.* Enter the name(s) of union(s) if any of the services are being performed by the incumbent contractor under collective bargaining agreement(s). If an entry is required in c., a copy of all current applicable collective bargaining agreements must be furnished with the notice. The notice will be returned without action by the Department of Labor if this is not done.

Item 9—It is often necessary for the Department of Labor to get in touch with the contracting official who submitted the notice in order to clarify particular points and expedite a response. The name of this official should be printed or typed in the space provided and he should sign his name above. The telephone number, including area code, should be entered. Enter the date the notice is submitted.

Item 10—Print or type this entry in the space provided within the brackets. This is used by the Department of Labor to identify the contracting agency and for mailing purposes.

ENTRIES ON ATTACHMENT A

Item 11—Enter the notice number found in Item 1 of the basic form.

Item 12—Enter the classes of service employees to be employed in performing the contract. A simple entry may suffice: "Janitor," "Window cleaner," "Automotive mechanic," "Guard," "Stenographer," "Typist," "Warehouseman," "File clerk." Where more complex jobs are involved, it will expedite handling to use a few lines below the entry for a class to describe briefly what the employee will do—a sort of capsule job description. The entries in Item 12 are crucial as they enable the Department of Labor to "match" the job to be performed against existing wage determinations or available wage payment data.

Item 13—Enter the number of employees to be employed in each class listed in Item 12. Do not omit this figure even though it may be necessary to use a rough estimate.

Item 14—The amended Service Contract Act (section 2(a)(5)) requires the contracting agency to include in the contract: "A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of Title 5, United States Code, were applicable to them." The Secretary of Labor is required to give "due consideration" to such rates in making wage and fringe benefit determinations.

For purposes of the entries in Item 14, assume that each class of employees listed in Item 12 is to be Federally employed: that is, to be employed directly as "wage board" or "blue collar" employees by the contracting agency and who, if so employed, would receive wages as provided in 5 United States Code 5341. Enter the hourly wage rate that each such listed class would be paid. The agency's personnel office may be of help in determining the appropriate hourly rate entries.

While the "statement" made part of the contract must include both the hourly wage rates *and* fringe benefits that would be paid to the various classes, it is not necessary to furnish fringe benefit information as part of the notice. In giving "due consideration" to the fringe benefits that would be paid, the Department of Labor will consult the formula previously made available to all contracting agencies for use in preparing the "statement" required to be made part of the contract.

INSTRUCTIONS—RESPONSE PORTION OF NOTICE

(Completed by Department of Labor)

The original copy of the basic form and the original copy of the attachment will be returned to the contracting agency with appropriate entries *by the Department of Labor* in that portion of the basic form reserved for Response to Notice.

A. If this box is marked, the wage determination(s) applicable will be listed by number and attached. The wage rates and fringe benefits reflected in the attached wage determination(s) are applicable to the procurement and must be made part of the contract. (If wage rates and fringe benefits are not provided in the wage determination(s) for particular classes of service employees to be employed on the contract, conforming action must be taken as provided in Title 29, Part 4, section 4.6(b)(2), Code of Federal Regulations.)

B. If this box is marked, no wage determination applicable to the specified locality and classes of employees is in effect. However, successor contractors may not pay less than the collectively bargained wage rates and fringe benefits, including any prospective increases, applicable to employees of the predecessor contractor except where, upon a hearing, it is found that such wage rates and fringe benefits are substantially at variance with those that prevail in the locality. In no case may an employee be paid less than the minimum wage under section 6(a)(1) of the Fair Labor Standards Act.

C. From time to time the Department of Labor receives a notice with respect to a proposed contract which, on the basis of the information supplied by the contracting agency, is not subject to the Service Contract Act. If box C is marked, an explanation will be attached.

D. This box will be marked if the notice must be returned for additional information. An explanation will be attached so that the contracting agency will know what action to take.

ADDITIONAL WAGE DATA

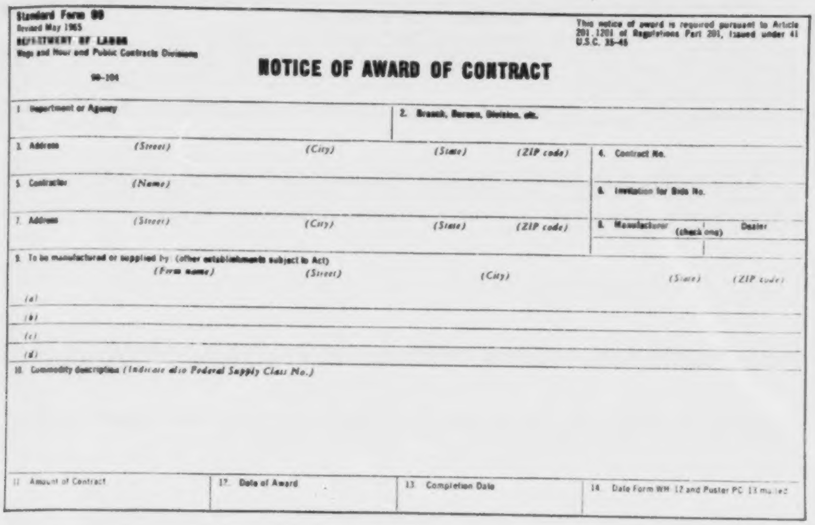
The Department of Labor welcomes any wage rate and fringe benefits data the contracting agency may submit in connection with a notice, as well as any explanatory information that will assist in understanding the proposed procurement.

53.301-98a Standard Form 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).

STANDARD FORM 98a February 1973 U.S DEPARTMENT OF LABOR Employment Standards Administration	**NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE** (Attachment A)	11. NOTICE NO.
12. CLASSES OF SERVICE EMPLOYEES TO BE EMPLOYED ON CONTRACT	13. NUMBER OF EMPLOYEES IN EACH CLASS	14. HOURLY WAGE RATE THAT WOULD BE PAID IF FEDERALLY EMPLOYED

98–201

53.301-99 Standard Form 99, Notice of Award of Contract.



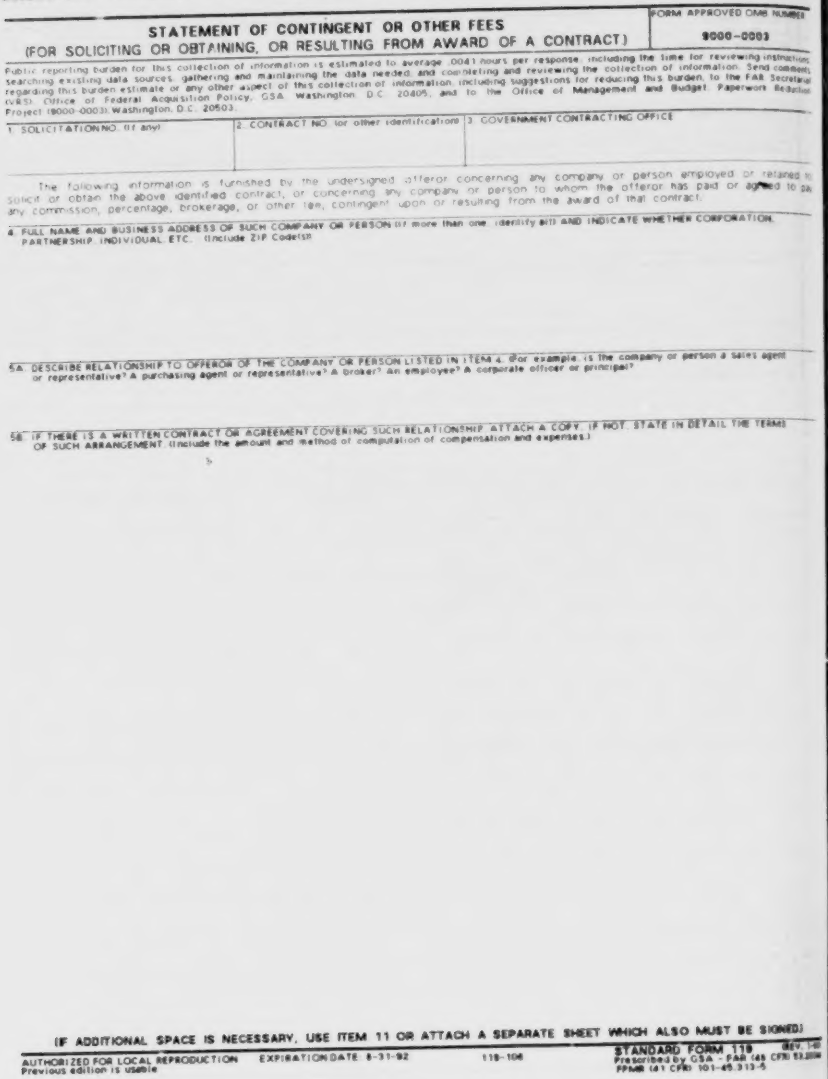
Standard Form 99
Revised May 1965
DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
99-104

This notice of award is required pursuant to Article 201.1201 of Regulations Part 201, issued under 41 U.S.C. 35-45

NOTICE OF AWARD OF CONTRACT

1. Department or Agency
2. Branch, Bureau, Division, etc.
3. Address (Street) (City) (State) (ZIP code)
4. Contract No.
5. Contractor (Name)
6. Invitation for Bids No.
7. Address (Street) (City) (State) (ZIP code)
8. Manufacturer (check one) Dealer
9. To be manufactured or supplied by: (other establishments subject to Act)
(Firm name) (Street) (City) (State) (ZIP code)
(a)
(b)
(c)
(d)
10. Commodity description (Indicate also Federal Supply Class No.)
11. Amount of Contract
12. Date of Award
13. Completion Date
14. Date Form WH 12 and Poster PC 13 mailed

53.301-119 Statement of Contingent or Other Fees.



STATEMENT OF CONTINGENT OR OTHER FEES
(FOR SOLICITING OR OBTAINING, OR RESULTING FROM AWARD OF A CONTRACT)

FORM APPROVED OMB NUMBE
9000-0003

Public reporting burden for this collection of information is estimated to average .0041 hours per response, including the time for reviewing instruction searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretari (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reductio Project (9000-0003), Washington, D.C. 20503.

1. SOLICITATION NO. (If any)	2. CONTRACT NO. (or other identification)	3. GOVERNMENT CONTRACTING OFFICE

The following information is furnished by the undersigned offeror concerning any company or person employed or retained to solicit or obtain the above identified contract, or concerning any company or person to whom the offeror has paid or agreed to pa any commission, percentage, brokerage, or other fee, contingent upon or resulting from the award of that contract.

4. FULL NAME AND BUSINESS ADDRESS OF SUCH COMPANY OR PERSON (If more than one, identify all) AND INDICATE WHETHER CORPORATION, PARTNERSHIP, INDIVIDUAL, ETC. (Include ZIP Code(s))

5A. DESCRIBE RELATIONSHIP TO OFFEROR OF THE COMPANY OR PERSON LISTED IN ITEM 4. (For example, is the company or person a sales agent or representative? A purchasing agent or representative? A broker? An employee? A corporate officer or principal?

5B. IF THERE IS A WRITTEN CONTRACT OR AGREEMENT COVERING SUCH RELATIONSHIP, ATTACH A COPY. IF NOT, STATE IN DETAIL THE TERMS OF SUCH ARRANGEMENT. (Include the amount and method of computation of compensation and expenses.)

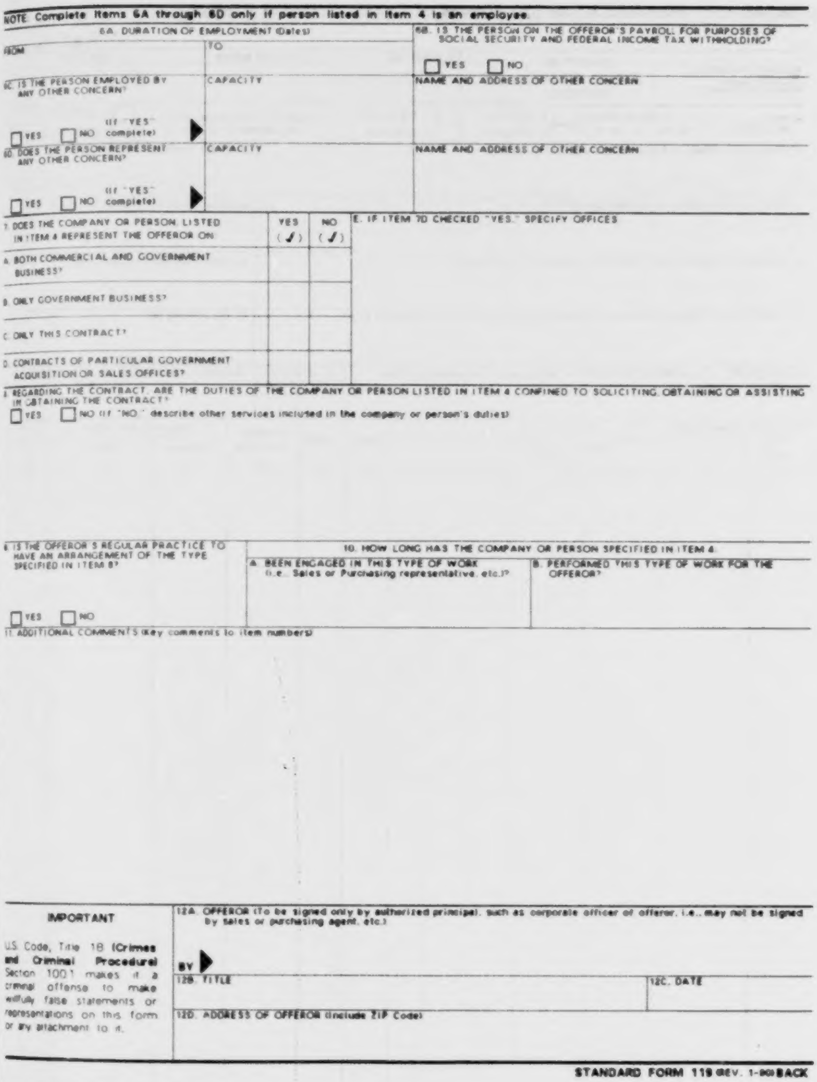
(IF ADDITIONAL SPACE IS NECESSARY, USE ITEM 11 OR ATTACH A SEPARATE SHEET WHICH ALSO MUST BE SIGNED)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

EXPIRATION DATE: 8-31-92

119-106

STANDARD FORM 119 (REV. 1-9
Prescribed by GSA - FAR (48 CFR) 53.20
FPMR (41 CFR) 101-45.313-5



NOTE: Complete Items 6A through 6D only if person listed in Item 4 is an employee.

6A. DURATION OF EMPLOYMENT (Dates) FROM	TO	6B. IS THE PERSON ON THE OFFEROR'S PAYROLL FOR PURPOSES OF SOCIAL SECURITY AND FEDERAL INCOME TAX WITHHOLDING? ☐ YES ☐ NO
6C. IS THE PERSON EMPLOYED BY ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete) ▶	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN
6D. DOES THE PERSON REPRESENT ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete) ▶	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN

7. DOES THE COMPANY OR PERSON LISTED IN ITEM 4 REPRESENT THE OFFEROR ON:	YES (✓)	NO (✓)	E. IF ITEM 7D CHECKED "YES," SPECIFY OFFICES
A. BOTH COMMERCIAL AND GOVERNMENT BUSINESS?			
B. ONLY GOVERNMENT BUSINESS?			
C. ONLY THIS CONTRACT?			
D. CONTRACTS OF PARTICULAR GOVERNMENT ACQUISITION OR SALES OFFICES?			

8. REGARDING THE CONTRACT, ARE THE DUTIES OF THE COMPANY OR PERSON LISTED IN ITEM 4 CONFINED TO SOLICITING, OBTAINING OR ASSISTING IN OBTAINING THE CONTRACT?

☐ YES ☐ NO (If "NO," describe other services included in the company or person's duties)

9. IS THE OFFEROR'S REGULAR PRACTICE TO HAVE AN ARRANGEMENT OF THE TYPE SPECIFIED IN ITEM 8?	10. HOW LONG HAS THE COMPANY OR PERSON SPECIFIED IN ITEM 4	
	A. BEEN ENGAGED IN THIS TYPE OF WORK (i.e., Sales or Purchasing representative, etc.)?	B. PERFORMED THIS TYPE OF WORK FOR THE OFFEROR?
☐ YES ☐ NO		

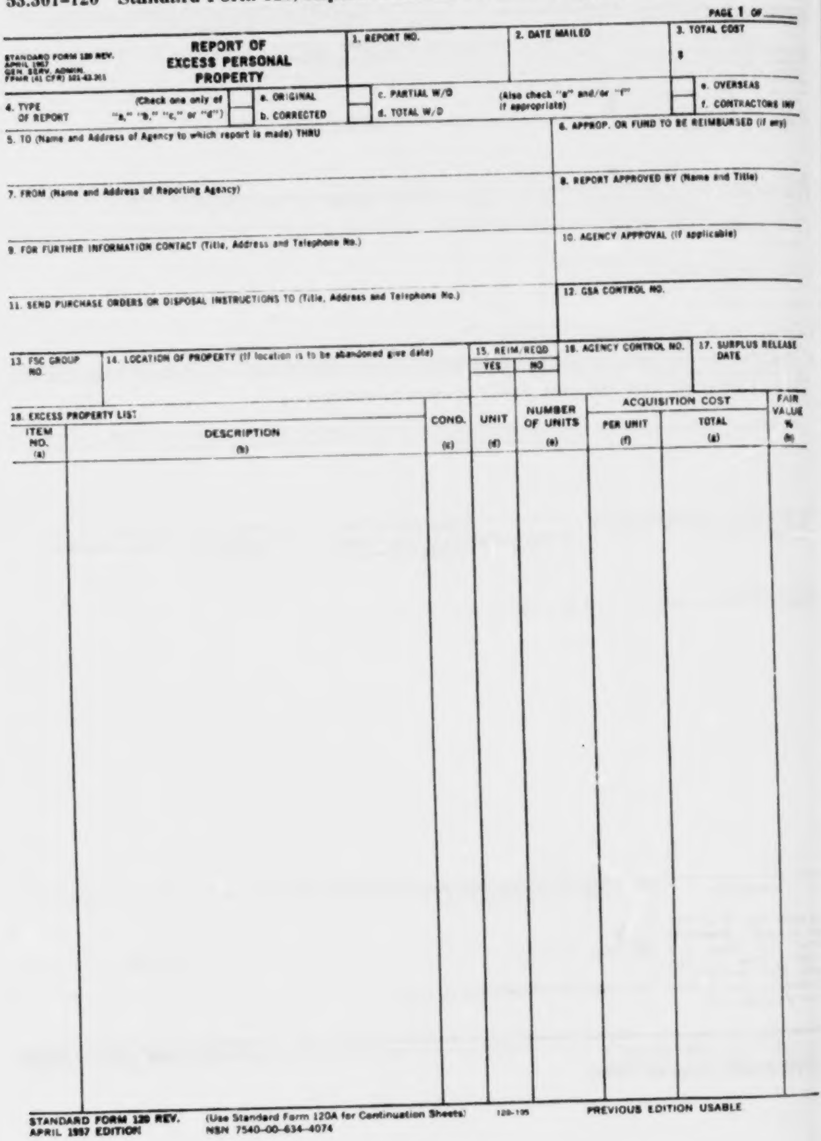
11. ADDITIONAL COMMENTS (Key comments to item numbers)

IMPORTANT U.S. Code, Title 18 **(Crimes and Criminal Procedure)** Section 1001 makes it a criminal offense to make willfully false statements or representations on this form or any attachment to it.	12A. OFFEROR (To be signed only by authorized principal, such as corporate officer of offeror, i.e., may not be signed by sales or purchasing agent, etc.) BY ▶	
	12B. TITLE	12C. DATE
	12D. ADDRESS OF OFFEROR (Include ZIP Code)	

STANDARD FORM 119 (REV. 1-90) BACK

[55 FR 25547, June 21, 1990]

53.301-120 Standard Form 120, Report of Excess Personal Property.



PAGE 1 OF ____

STANDARD FORM 120 REV.
APRIL 1957
GEN. SERV. ADMIN.
FPMR (41 CFR) 101-43.311

REPORT OF EXCESS PERSONAL PROPERTY

1. REPORT NO.

2. DATE MAILED

3. TOTAL COST
$

4. TYPE OF REPORT (Check one only of "a," "b," "c," or "d")
☐ a. ORIGINAL
☐ b. CORRECTED
☐ c. PARTIAL W/D
☐ d. TOTAL W/D
(Also check "e" and/or "f" if appropriate)
☐ e. OVERSEAS
☐ f. CONTRACTORS INV

5. TO (Name and Address of Agency to which report is made) THRU

6. APPROP. OR FUND TO BE REIMBURSED (If any)

7. FROM (Name and Address of Reporting Agency)

8. REPORT APPROVED BY (Name and Title)

9. FOR FURTHER INFORMATION CONTACT (Title, Address and Telephone No.)

10. AGENCY APPROVAL (If applicable)

11. SEND PURCHASE ORDERS OR DISPOSAL INSTRUCTIONS TO (Title, Address and Telephone No.)

12. GSA CONTROL NO.

13. FSC GROUP NO.

14. LOCATION OF PROPERTY (If location is to be abandoned give date)

15. REIM/REQD
YES
NO

16. AGENCY CONTROL NO.

17. SURPLUS RELEASE DATE

18. EXCESS PROPERTY LIST

ITEM NO. (a)	DESCRIPTION (b)	COND. (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)

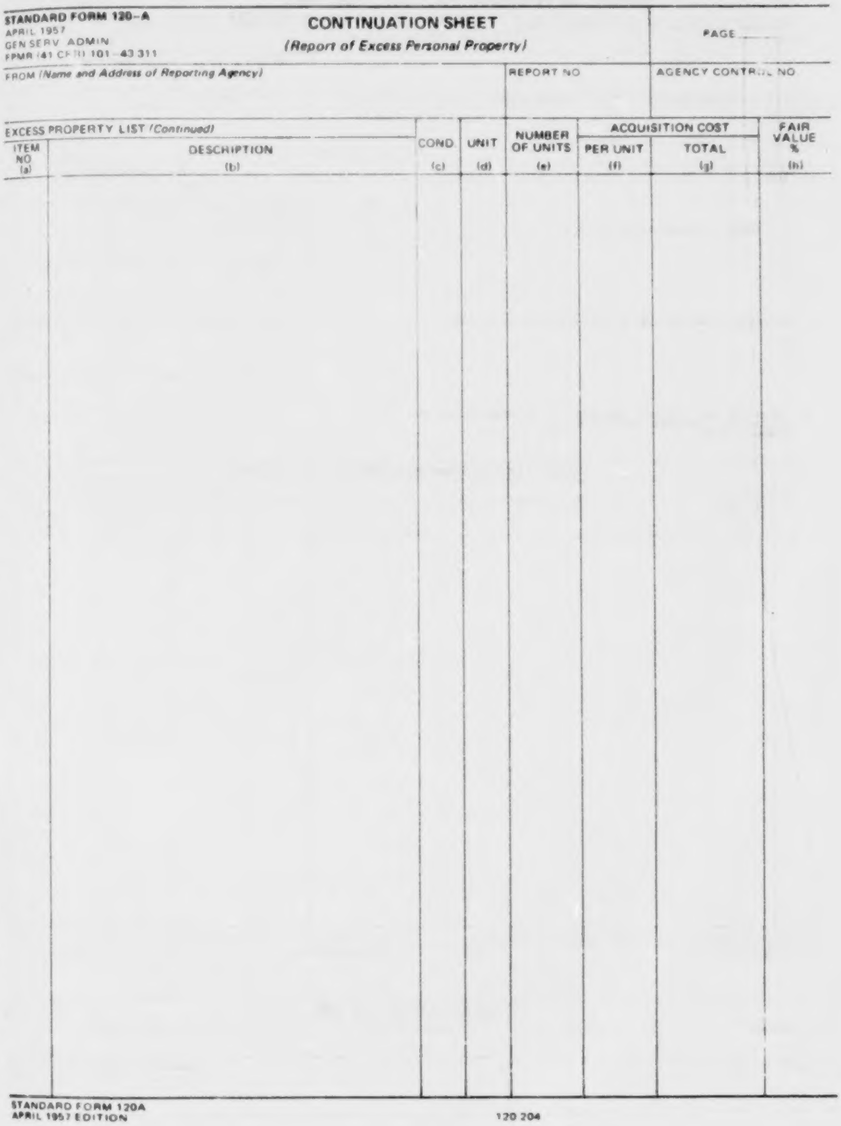
STANDARD FORM 120 REV.
APRIL 1957 EDITION

(Use Standard Form 120A for Continuation Sheets)
NSN 7540-00-634-4074

120-105

PREVIOUS EDITION USABLE

53.301-120-A Standard Form 120-A, Continuation Sheet (Report of Excess Personal Property).



STANDARD FORM 120-A
APRIL 1957
GEN SERV ADMIN
FPMR (41 CFR) 101-43.311

CONTINUATION SHEET
(Report of Excess Personal Property)

PAGE ____

FROM *(Name and Address of Reporting Agency)*

REPORT NO

AGENCY CONTROL NO

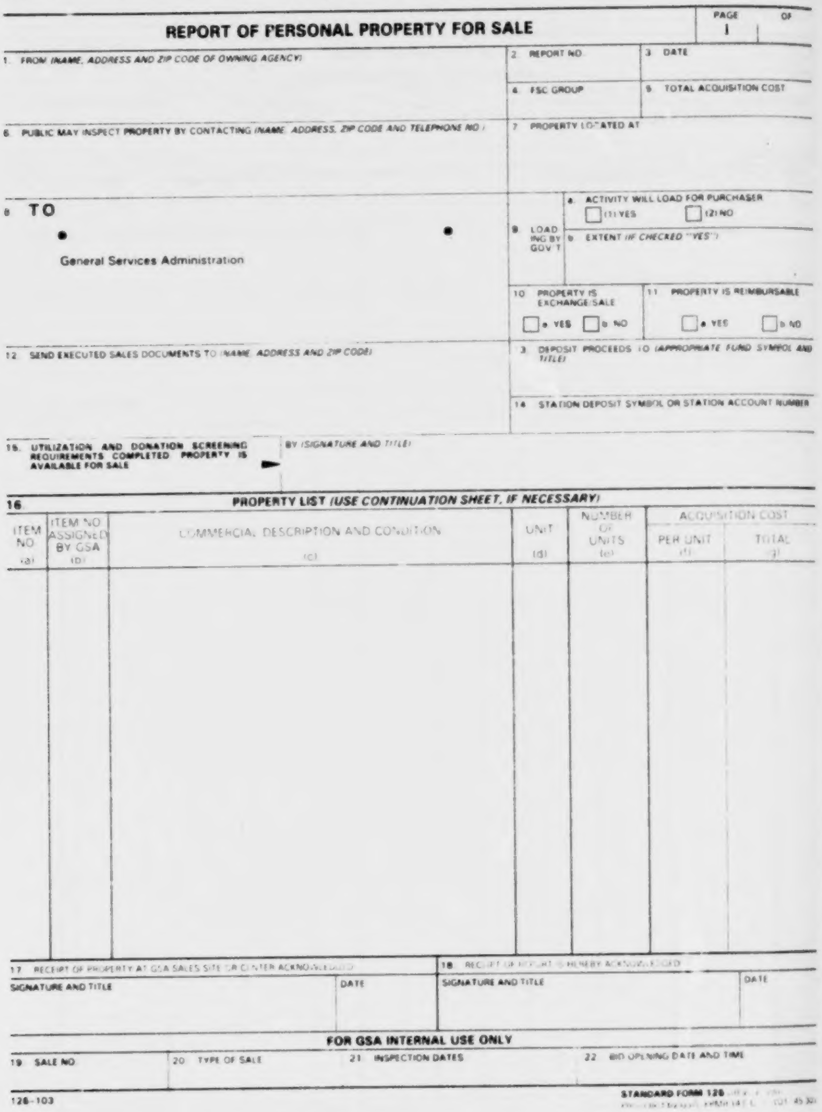
EXCESS PROPERTY LIST *(Continued)*

ITEM NO (a)	DESCRIPTION (b)	COND (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)

STANDARD FORM 120A
APRIL 1957 EDITION

120 204

53.301-126 Standard Form 126, Report of Personal Property for Sale.



REPORT OF PERSONAL PROPERTY FOR SALE

PAGE 1 OF

1. FROM *(NAME, ADDRESS AND ZIP CODE OF OWNING AGENCY)*

2. REPORT NO.

3. DATE

4. FSC GROUP

5. TOTAL ACQUISITION COST

6. PUBLIC MAY INSPECT PROPERTY BY CONTACTING *(NAME, ADDRESS, ZIP CODE AND TELEPHONE NO.)*

7. PROPERTY LOCATED AT

8. **TO**

General Services Administration

9. LOADING BY GOV'T

a. ACTIVITY WILL LOAD FOR PURCHASER ☐ (1) YES ☐ (2) NO

b. EXTENT *(IF CHECKED "YES")*

10. PROPERTY IS EXCHANGE/SALE ☐ a. YES ☐ b. NO

11. PROPERTY IS REIMBURSABLE ☐ a. YES ☐ b. NO

12. SEND EXECUTED SALES DOCUMENTS TO *(NAME, ADDRESS AND ZIP CODE)*

13. DEPOSIT PROCEEDS TO *(APPROPRIATE FUND SYMBOL AND TITLE)*

14. STATION DEPOSIT SYMBOL OR STATION ACCOUNT NUMBER

15. UTILIZATION AND DONATION SCREENING REQUIREMENTS COMPLETED. PROPERTY IS AVAILABLE FOR SALE ► BY *(SIGNATURE AND TITLE)*

16. **PROPERTY LIST *(USE CONTINUATION SHEET, IF NECESSARY)***

ITEM NO. (a)	ITEM NO. ASSIGNED BY GSA (b)	COMMERCIAL DESCRIPTION AND CONDITION (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)

17. RECEIPT OF PROPERTY AT GSA SALES SITE OR CENTER ACKNOWLEDGED

SIGNATURE AND TITLE

DATE

18. RECEIPT OF REPORT IS HEREBY ACKNOWLEDGED

SIGNATURE AND TITLE

DATE

FOR GSA INTERNAL USE ONLY

19. SALE NO.

20. TYPE OF SALE

21. INSPECTION DATES

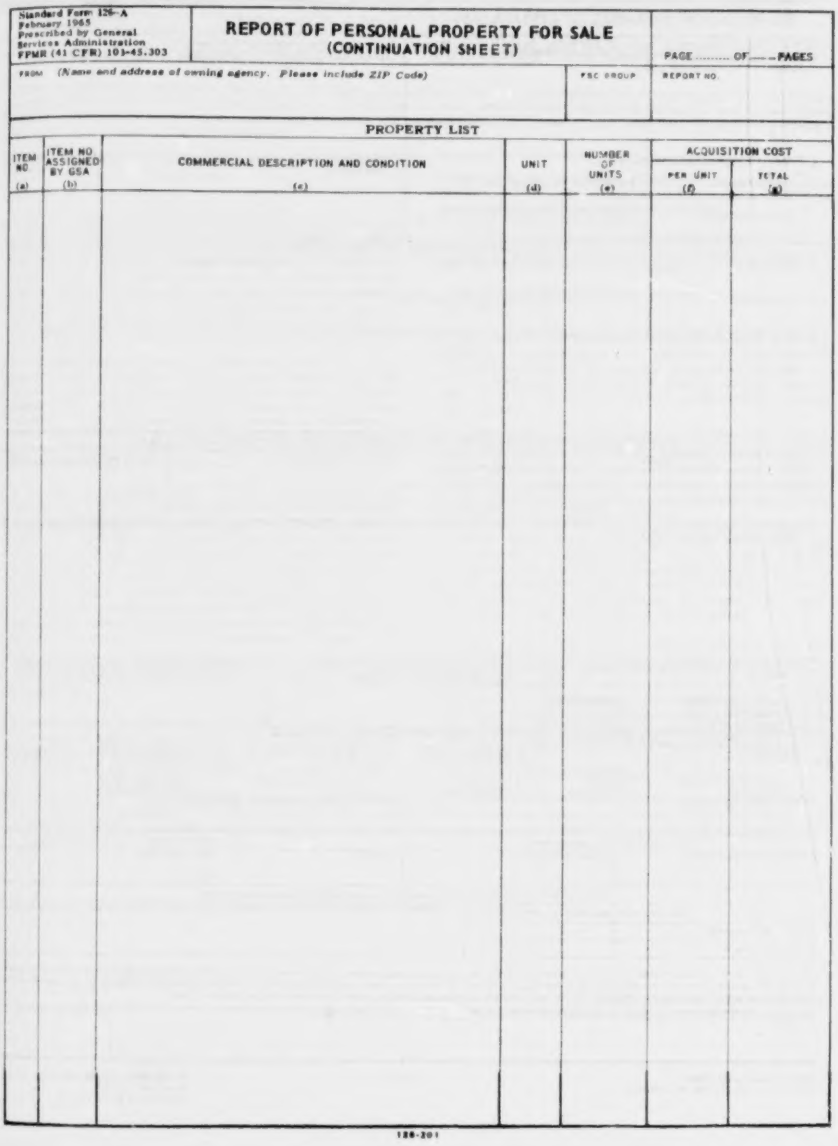
22. BID OPENING DATE AND TIME

126-103

STANDARD FORM 126 [illegible]

[illegible]

53.301-126-A Standard Form 126-A, Report of Personal Property for Sale (Continuation Sheet).



Standard Form 126-A
February 1965
Prescribed by General
Services Administration
FPMR (41 CFR) 101-45.303

REPORT OF PERSONAL PROPERTY FOR SALE
(CONTINUATION SHEET)

PAGE .... OF ...... PAGES

FROM (*Name and address of owning agency. Please include ZIP Code*)

FSC GROUP

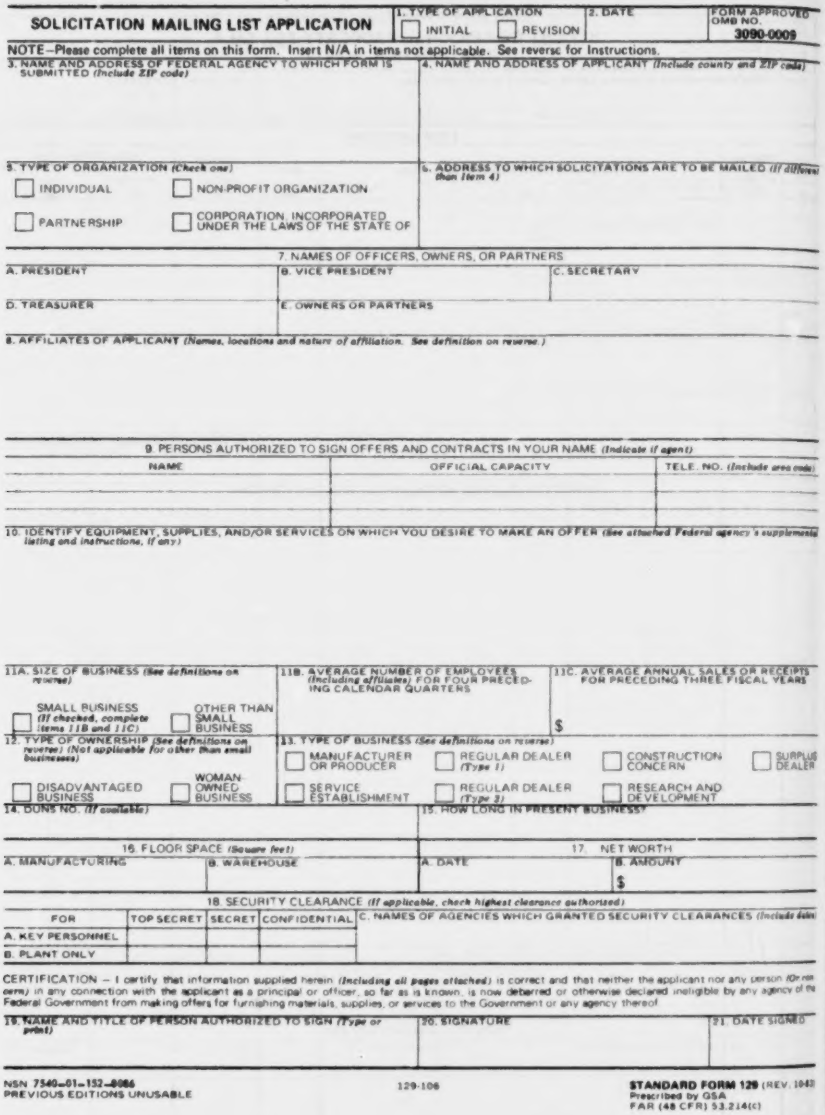
REPORT NO.

PROPERTY LIST

ITEM NO (a)	ITEM NO ASSIGNED BY GSA (b)	COMMERCIAL DESCRIPTION AND CONDITION (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST	
					PER UNIT (f)	TOTAL (g)

126-201

53.301-129 Standard Form 129, Solicitation Mailing List Application.



SOLICITATION MAILING LIST APPLICATION

1. TYPE OF APPLICATION ☐ INITIAL ☐ REVISION
2. DATE
FORM APPROVED OMB NO. 3090-0009

NOTE—Please complete all items on this form. Insert N/A in items not applicable. See reverse for Instructions.

3. NAME AND ADDRESS OF FEDERAL AGENCY TO WHICH FORM IS SUBMITTED *(Include ZIP code)*
4. NAME AND ADDRESS OF APPLICANT *(Include county and ZIP code)*
5. TYPE OF ORGANIZATION *(Check one)*
☐ INDIVIDUAL ☐ NON-PROFIT ORGANIZATION
☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF
6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED *(If differ than Item 4)*

7. NAMES OF OFFICERS, OWNERS, OR PARTNERS

A. PRESIDENT	B. VICE PRESIDENT	C. SECRETARY
D. TREASURER	E. OWNERS OR PARTNERS	

8. AFFILIATES OF APPLICANT *(Names, locations and nature of affiliation. See definition on reverse.)*

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME *(Indicate if agent)*

NAME	OFFICIAL CAPACITY	TELE. NO. *(Include area code)*

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER *(See attached Federal agency's supplementa listing and instructions, if any)*

11A. SIZE OF BUSINESS *(See definitions on reverse)*
☐ SMALL BUSINESS *(If checked, complete items 11B and 11C)* ☐ OTHER THAN SMALL BUSINESS
11B. AVERAGE NUMBER OF EMPLOYEES *(Including affiliates)* FOR FOUR PRECEDING CALENDAR QUARTERS
11C. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS
$
12. TYPE OF OWNERSHIP *(See definitions on reverse) (Not applicable for other than small businesses)*
☐ DISADVANTAGED BUSINESS ☐ WOMAN-OWNED BUSINESS
13. TYPE OF BUSINESS *(See definitions on reverse)*
☐ MANUFACTURER OR PRODUCER ☐ REGULAR DEALER *(Type 1)* ☐ CONSTRUCTION CONCERN ☐ SURPLUS DEALER
☐ SERVICE ESTABLISHMENT ☐ REGULAR DEALER *(Type 2)* ☐ RESEARCH AND DEVELOPMENT
14. DUNS NO. *(If available)*
15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE *(Square feet)*
A. MANUFACTURING
B. WAREHOUSE

17. NET WORTH
A. DATE
B. AMOUNT $

18. SECURITY CLEARANCE *(If applicable, check highest clearance authorized)*

FOR	TOP SECRET	SECRET	CONFIDENTIAL
A. KEY PERSONNEL			
B. PLANT ONLY			

C. NAMES OF AGENCIES WHICH GRANTED SECURITY CLEARANCES *(Include dat*

CERTIFICATION – I certify that information supplied herein *(Including all pages attached)* is correct and that neither the applicant nor any person *(Or concern)* in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN *(Type or print)*
20. SIGNATURE
21. DATE SIGNED

NSN 7540-01-152-8086
PREVIOUS EDITIONS UNUSABLE

129-106

STANDARD FORM 129 (REV. 10-8
Prescribed by GSA
FAR (48 CFR) 53.214(c)

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed and certified Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment supplies and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification Codes if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing list for the items concerned.

SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)

a. Small business concern—A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates—Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. Number of employees—(Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)

a. "Disadvantaged business concern"—means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business"—means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS
(See Item 13.)

a. Manufacturer or producer—means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. Service establishment—means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as part of the services performed.

c. Regular dealer (Type 1)—means a person (or concern) who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached, are bought, kept in stock, and sold to the public in the usual course of business.

d. Regular dealer (Type 2)—In the case of supplies of particular kinds (at present, petroleum, lumber and timber products, machine tools, raw cotton, green coffee, hay, grain, feed, or straw, agricultural liming materials, tea, raw or unmanufactured cotton linters and used ADPE), Regular dealer means a person (or concern) satisfying the requirements of the regulations (Code of Federal Regulations, Title 41, 50-201.101(a)(2)) as amended from time to time, prescribed by the Secretary of Labor under the Walsh-Healey Public Contracts Act (Title 41 U.S. Code 35-45). For coal dealers see Code of Federal Regulations, Title 41, 50-201.604(a).

- COMMERCE BUSINESS DAILY—The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

STANDARD FORM 129 BACK (REV. 10-83)

53.301-252 Standard Form 252, Architect-Engineer Contract.

ARCHITECT-ENGINEER CONTRACT	1. CONTRACT NO. 2. DATE OF CONTRACT
3A. NAME OF ARCHITECT-ENGINEER	3B. TELEPHONE NO. *(Include Area Code)*

3C. ADDRESS OF ARCHITECT-ENGINEER *(Include ZIP Code)*

4. DEPARTMENT OR AGENCY AND ADDRESS *(Include ZIP Code)*

5. PROJECT TITLE AND LOCATION

6. CONTRACT FOR *(General description of services to be provided)*

7. CONTRACT AMOUNT *(Express in words and figures)*

8. NEGOTIATION AUTHORITY

9. ADMINISTRATIVE, APPROPRIATION, AND ACCOUNTING DATA

NSN 7540-01-152-8072
PREVIOUS EDITION NOT USABLE

252-102

STANDARD FORM 252 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.236-2(a)

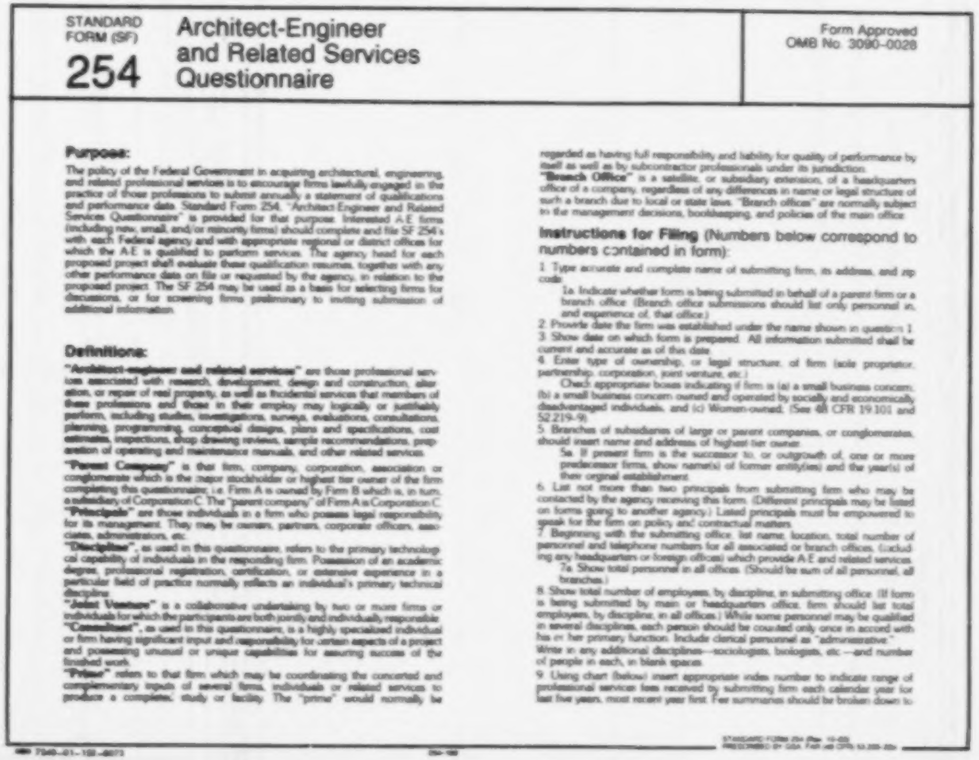
10. The United States of America (called the Government) represented by the Contracting Officer executing this contract, and the Architect-Engineer agree to perform this contract in strict accordance with the clauses and the documents identified as follows, all of which are made a part of this contract:

If the parties to this contract are comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.
The parties hereto have executed this contract as of the date recorded in Item 2.

	SIGNATURES	NAMES AND TITLES *(Typed)*
	11. ARCHITECT-ENGINEER OR OTHER PROFESSIONAL SERVICES CONTRACTOR	
A		
B		
C		
D		
	12. THE UNITED STATES OF AMERICA	
		Contracting Officer

STANDARD FORM 252 BACK (REV. 10-83)

53.301-254 Standard Form 254, Architect-Engineer and Related Services Questionnaire.



STANDARD FORM (SF) **254** Architect-Engineer and Related Services Questionnaire	Form Approved OMB No. 3090-0028

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire" is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e. Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant", as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.

   1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)

2. Provide date the firm was established under the name shown in question 1.

3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.

4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.)

   Check appropriate boxes indicating if firm is (a) a small business concern, (b) a small business concern owned and operated by socially and economically disadvantaged individuals, and (c) Women-owned. (See 48 CFR 19.101 and 52.219-9).

5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest tier owner.

   5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.

6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.

7. Beginning with the submitting office, list name, location, total number of personnel and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.

   7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)

8. Show total number of employees, by discipline, in submitting office. (If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines—sociologists, biologists, etc.—and number of people in each, in blank spaces.

9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to

7540-01-152-8073 254-101

STANDARD FORM 254 (Rev. 10-83)
PRESCRIBED BY GSA, FAR (48 CFR) 53.236-2(b)

STANDARD FORM (SF)
254

Architect-Engineer and Related Services Questionnaire

reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX		INDEX	
1	Less than $100,000	5	$1 million to $2 million
2	$100,000 to $250,000	6	$2 million to $5 million
3	$250,000 to $500,000	7	$5 million to $10 million
4	$500,000 to $1 million	8	$10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past five years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (New firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employ of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

001	Acoustics; Noise Abatement
002	Aerial Photogrammetry
003	Agricultural Development; Grain Storage; Farm Mechanization
004	Air Pollution Control
005	Airports; Navaids; Airport Lighting; Aircraft Fueling
006	Airports; Terminals & Hangars; Freight Handling
007	Arctic Facilities
008	Auditoriums & Theatres
009	Automation; Controls; Instrumentation
010	Barracks; Dormitories
011	Bridges
012	Cemeteries *(Planning & Relocation)*
013	Chemical Processing & Storage
014	Churches; Chapels
015	Codes; Standards; Ordinances
016	Cold Storage; Refrigeration; Fast Freeze
017	Commercial Buildings *(low rise)*; Shopping Centers
018	Communications Systems; TV; Microwave
019	Computer Facilities; Computer Service
020	Conservation and Resource Management
021	Construction Management
022	Corrosion Control; Cathodic Protection; Electrolysis
023	Cost Estimating
024	Dams *(Concrete; Arch)*
025	Dams *(Earth; Rock)*; Dikes; Levees
026	Desalinization *(Process & Facilities)*
027	Dining Halls; Clubs; Restaurants
028	Ecological & Archeological Investigations
029	Educational Facilities; Classrooms
030	Electronics
031	Elevators; Escalators; People-Movers
032	Energy Conservation; New Energy Sources
033	Environmental Impact Studies, Assessments or Statements
034	Fallout Shelters; Blast-Resistant Design
035	Field Houses; Gyms; Stadiums
036	Fire Protection
037	Fisheries; Fish Ladders
038	Forestry & Forest Products
039	Garages; Vehicle Maintenance Facilities; Parking Decks
040	Gas Systems *(Propane; Natural, Etc.)*
041	Graphic Design
042	Harbors; Jetties; Piers; Ship Terminal Facilities
043	Heating; Ventilating; Air Conditioning
044	Health Systems Planning
045	Highrise; Air-Rights-Type Buildings
046	Highways; Streets; Airfield Paving; Parking Lots
047	Historical Preservation
048	Hospital & Medical Facilities
049	Hotels; Models
050	Housing *(Residential, Multi-Family; Apartments; Condominiums)*
051	Hydraulics & Pneumatics
052	Industrial Buildings; Manufacturing Plants
053	Industrial Processes; Quality Control
054	Industrial Waste Treatment
055	Interior Design; Space Planning
056	Irrigation; Drainage
057	Judicial and Courtroom Facilities
058	Laboratories; Medical Research Facilities
059	Landscape Architecture
060	Libraries; Museums; Galleries
061	Lighting *(Interiors; Display; Theatre, Etc.)*
062	Lighting *(Exteriors; Streets; Memorials; Athletic Fields, Etc.)*
063	Materials Handling Systems; Conveyors; Sorters
064	Metallurgy
065	Microclimatology; Tropical Engineering
066	Military Design Standards
067	Mining & Mineralogy
068	Missile Facilities *(Silos; Fuels; Transport)*
069	Modular Systems Design; Pre-Fabricated Structures or Components
070	Naval Architecture; Off-Shore Platforms
071	Nuclear Facilities; Nuclear Shielding
072	Office Buildings; Industrial Parks
073	Oceanographic Engineering
074	Ordnance; Munitions; Special Weapons
075	Petroleum Exploration; Refining
076	Petroleum and Fuel *(Storage and Distribution)*
077	Pipelines *(Cross-Country—Liquid & Gas)*
078	Planning *(Community, Regional, Areawide and State)*
079	Planning *(Site, Installation, and Project)*
080	Plumbing & Piping Design
081	Pneumatic Structures; Air-Support Buildings
082	Postal Facilities
083	Power Generation, Transmission, Distribution
084	Prisons & Correctional Facilities
085	Product, Machine & Equipment Design
086	Radar; Sonar; Radio & Radar Telescopes
087	Railroad; Rapid Transit
088	Recreation Facilities *(Parks, Marinas, Etc.)*
089	Rehabilitation *(Buildings; Structures; Facilities)*
090	Resource Recovery; Recycling
091	Radio Frequency Systems & Shieldings
092	Rivers; Canals; Waterways; Flood Control
093	Safety Engineering; Accident Studies; OSHA Studies
094	Security Systems; Intruder & Smoke Detection
095	Seismic Designs & Studies
096	Sewage Collection, Treatment and Disposal
097	Soils & Geologic Studies; Foundations
098	Solar Energy Utilization
099	Solid Wastes; Incineration; Land Fill
100	Special Environments; Clean Rooms, Etc.
101	Structural Design; Special Structures
102	Surveying; Platting; Mapping; Flood Plain Studies
103	Swimming Pools
104	Storm Water Handling & Facilities
105	Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
106	Testing & Inspection Services
107	Traffic & Transportation Engineering
108	Towers *(Self-Supporting & Guyed Systems)*
109	Tunnels & Subways
110	Urban Renewals; Community Development
111	Utilities *(Gas & Steam)*
112	Value Analysis; Life-Cycle Costing
113	Warehouses & Depots
114	Water Resources; Hydrology; Ground Water
115	Water Supply, Treatment and Distribution
116	Wind Tunnels; Research/Testing Facilities Design
117	Zoning; Land Use Studies
201	
202	
203	
204	
205	

STANDARD FORM 254 (REV. 10-83)

STANDARD FORM (SF)
254
Architect-Engineer and Related Services Questionnaire

1. Firm Name / Business Address:

1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office

2. Year Present Firm Established:

3. Date Prepared:

4. Specify type of ownership and check below, if applicable.

☐ A. Small Business
☐ B. Small Disadvantaged Business
☐ C. Woman-owned Business

5. Name of Parent Company, if any:

5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title / Telephone
1)
2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office

7a. Total Personnel ______

8. Personnel by Discipline: *(List each person only once, by primary function.)*

- ____ Administrative
- ____ Architects
- ____ Chemical Engineers
- ____ Civil Engineers
- ____ Construction Inspectors
- ____ Draftsmen
- ____ Ecologists
- ____ Economists
- ____ Electrical Engineers
- ____ Estimators
- ____ Geologists
- ____ Hydrologists
- ____ Interior Designers
- ____ Landscape Architects
- ____ Mechanical Engineers
- ____ Mining Engineers
- ____ Oceanographers
- ____ Planners: Urban/Regional
- ____ Sanitary Engineers
- ____ Soils Engineers
- ____ Specification Writers
- ____ Structural Engineers
- ____ Surveyors
- ____ Transportation Engineers
- ____ ________
- ____ ________
- ____ ________
- ____ ________
- ____ ________
- ____ ________
- ____ ________

9. Summary of Professional Services Fees Received: (Insert index number)

	Last 5 Years (most recent year first)				
	19____	19____	19____	19____	19____
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees

INDEX	
1.	Less than $100,000
2.	$100,000 to $250,000
3.	$250,000 to $500,000
4.	$500,000 to $1 million
5.	$1 million to $2 million
6.	$2 million to $5 million
7.	$5 million to $10 million
8.	$10 million or greater

4

STANDARD FORM 254 (REV. 10-83)

10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)			21)		
2)			12)			22)		
3)			13)			23)		
4)			14)			24)		
5)			15)			25)		
6)			16)			26)		
7)			17)			27)		
8)			18)			28)		
9)			19)			29)		
10)			20)			30)		

11. Project Examples, Last 5 Years

Profile Code	"P", "C", "JV", or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

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		8			
		9			
		10			
		11			
		12			
		13			
		14			
		15			
		16			
		17			
		18			
		19			

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		20			
		21			
		22			
		23			
		24			
		25			
		26			
		27			
		28			
		29			
		30			

12. The foregoing is a statement of facts

Signature: ______________________ Typed Name and Title: ______________________ Date:

STANDARD FORM 254 (REV. 10-83)

53.301-255 Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project.

STANDARD
FORM (SF)
255

Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 3090-0029

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture", is a collaborative undertaking of two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants", as used in this questionnaire, refer to individuals who will have **major** project responsibility or will provide **unusual or unique** capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.

2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of personnel by discipline presently employed (on date of this form) at office specified in block 3b. While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines—sociologists, biologists, etc.—and number of people in each, in blank spaces.

5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility. (i.e., technical disciplines, administration, financial, sociological, environmental, etc.)

5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

1 NSN 7540-01-152-8074

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STANDARD FORM 255 (Rev. 10-83)
PRESCRIBED BY GSA, FAR (48 CFR) 53.236-2(b)

STANDARD
FORM (SF)
255

Architect-Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration,
Washington, D. C. 20405
Fed. Proc. Reg (41 CFR) 1-16 . 803
Armed Svc. Proc. Reg. 18-403

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non Federal governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

OMB Approval No. 3090-0029

STANDARD FORM (SF) 255

Architect-Engineer Related Services for Specific Project

1. Project Name / Location for which Firm is Filing

2a. **Commerce Business Daily** Announcement Date, if any:

2b. Agency Identification Number, if any:

3. Firm (or Joint-Venture) Name & Address

3a. Name, Title & Telephone Number of Principal to Contact

3b. Address of office to perform work, if different from Item 3

4. Personnel by Discipline: (List each person only once, by primary function.)

___ Administrative
___ Architects
___ Chemical Engineers
___ Civil Engineers
___ Construction Inspectors
___ Draftsmen
___ Ecologists
___ Economists
___ Electrical Engineers
___ Estimators
___ Geologists
___ Hydrologists
___ Interior Designers
___ Landscape Architects
___ Mechanical Engineers
___ Mining Engineers
___ Oceanographers
___ Planners: Urban/Regional
___ Sanitary Engineers
___ Soils Engineers
___ Specification Writers
___ Structural Engineers
___ Surveyors
___ Transportation Engineers
___ ______________
___ ______________
___ ______________
___ ______________
___ ______________
___ ______________
___ ______________
___ Total Personnel

5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint-Venture previously worked together? ☐ yes ☐ no

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STANDARD FORM 255 (Rev. 10-83)

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).

Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.

a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.

a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ____ With Other Firms ____	d. Years experience: With This Firm ____ With Other Firms ____
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.

a. Name & Title	a. Name & Title
b. Project Assignment	b. Project Assignment
c. Name of Firm with which associated	c. Name of Firm with which associated
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project	g. Other Experience and Qualifications relevant to the proposed project

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7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ____ With Other Firms ____	d. Years experience: With This Firm ____ With Other Firms ____
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

8. Work by firm or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address	d. Completion Date (actual or estimated)	e. Estimated Cost (in thousands)	
				Entire Project	Work for which Firm was/is responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

9

STANDARD FORM 255 (Rev. 10-83)

9. All work by firms or joint-venture members currently being performed directly for Federal agencies.

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name & Address	d. Percent complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work for which firm is responsible

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

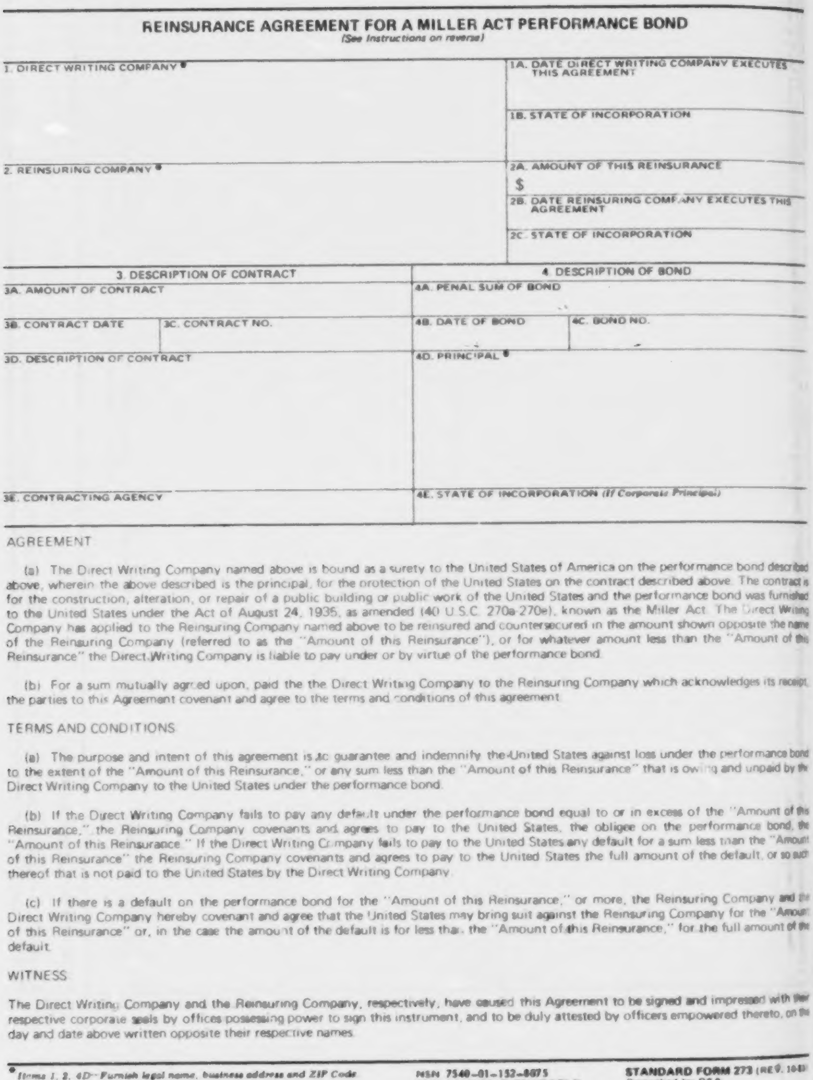
Signature ____________________ Typed Name and Title ____________________

Date:

11

STANDARD FORM 255 (Rev. 10-83)

53.301-273 Standard Form 273, Reinsurance Agreement for a Miller Act Performance Bond.



REINSURANCE AGREEMENT FOR A MILLER ACT PERFORMANCE BOND

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *

1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT

1B. STATE OF INCORPORATION

2. REINSURING COMPANY *

2A. AMOUNT OF THIS REINSURANCE
$

2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT

2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT

3A. AMOUNT OF CONTRACT

3B. CONTRACT DATE

3C. CONTRACT NO.

3D. DESCRIPTION OF CONTRACT

3E. CONTRACTING AGENCY

4. DESCRIPTION OF BOND

4A. PENAL SUM OF BOND

4B. DATE OF BOND

4C. BOND NO.

4D. PRINCIPAL *

4E. STATE OF INCORPORATION *(If Corporate Principal)*

AGREEMENT

(a) The Direct Writing Company named above is bound as a surety to the United States of America on the performance bond described above, wherein the above described is the principal, for the protection of the United States on the contract described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States and the performance bond was furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the performance bond.

(b) For a sum mutually agreed upon, paid the the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS

(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance bond to the extent of the "Amount of this Reinsurance," or any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company to the United States under the performance bond.

(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the performance bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance" the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance" or, in the case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by offices possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and date above written opposite their respective names.

Items 1, 2, 4D—Furnish legal name, business address and ZIP Code

NSN 7540-01-152-8075
PREVIOUS EDITION USABLE
273-102

STANDARD FORM 273 (REV. 10-8
Prescribed by GSA
FAR (48 CFR) 53.228(h)

5. DIRECT WRITING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

6. REINSURING COMPANY		
6A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
6B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

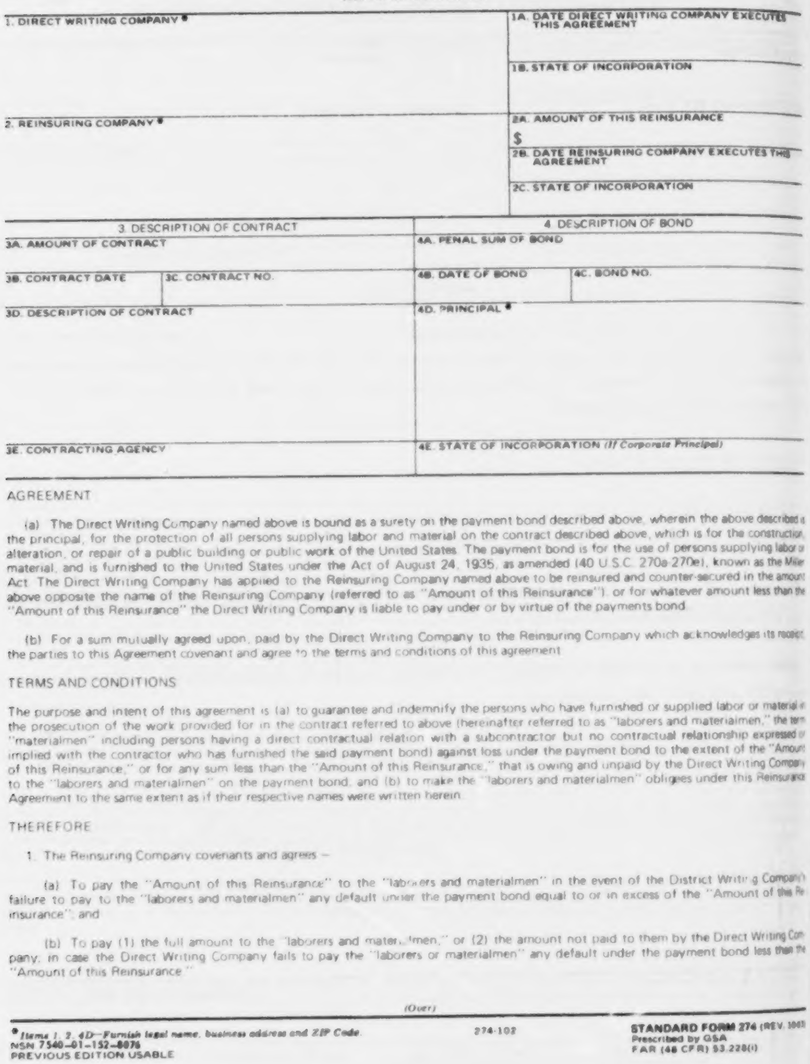
Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 273 BACK (REV. 10-83)

53.301-274 Standard Form 274, Reinsurance Agreement for a Miller Act Payment Bond.



REINSURANCE AGREEMENT FOR A MILLER ACT PAYMENT BOND

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT 1B. STATE OF INCORPORATION
2. REINSURING COMPANY *	2A. AMOUNT OF THIS REINSURANCE $ 2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT 2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL *	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT

(a) The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described i the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor o material, and is furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and counter-secured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payments bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material i the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed o implied with the contractor who has furnished the said payment bond) against loss under the payment bond to the extent of the "Amount of this Reinsurance," or for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the "laborers and materialmen" on the payment bond, and (b) to make the "laborers and materialmen" obligees under this Reinsurance Agreement to the same extent as if their respective names were written herein.

THEREFORE

1. The Reinsuring Company covenants and agrees —

(a) To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the District Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Re insurance"; and

(b) To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company, in case the Direct Writing Company fails to pay the "laborers or materialmen" any default under the payment bond less than the "Amount of this Reinsurance."

(Over)

* *Items 1, 2, 4D—Furnish legal name, business address and ZIP Code.*
NSN 7540-01-152-8076
PREVIOUS EDITION USABLE

274-102

STANDARD FORM 274 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(i)

2 The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by section 2(a) of the Miller Act (40 U.S.C. 270b(a)) may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed and executed for the "Amount of this Reinsurance" or, if the amount of the default is for less than the "Amount of this Reinsurance," for whatever the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accord with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3 The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4 The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in Item 1A written opposite their respective names.

5. DIRECT WRITING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
6. REINSURING COMPANY		
6A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
6B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

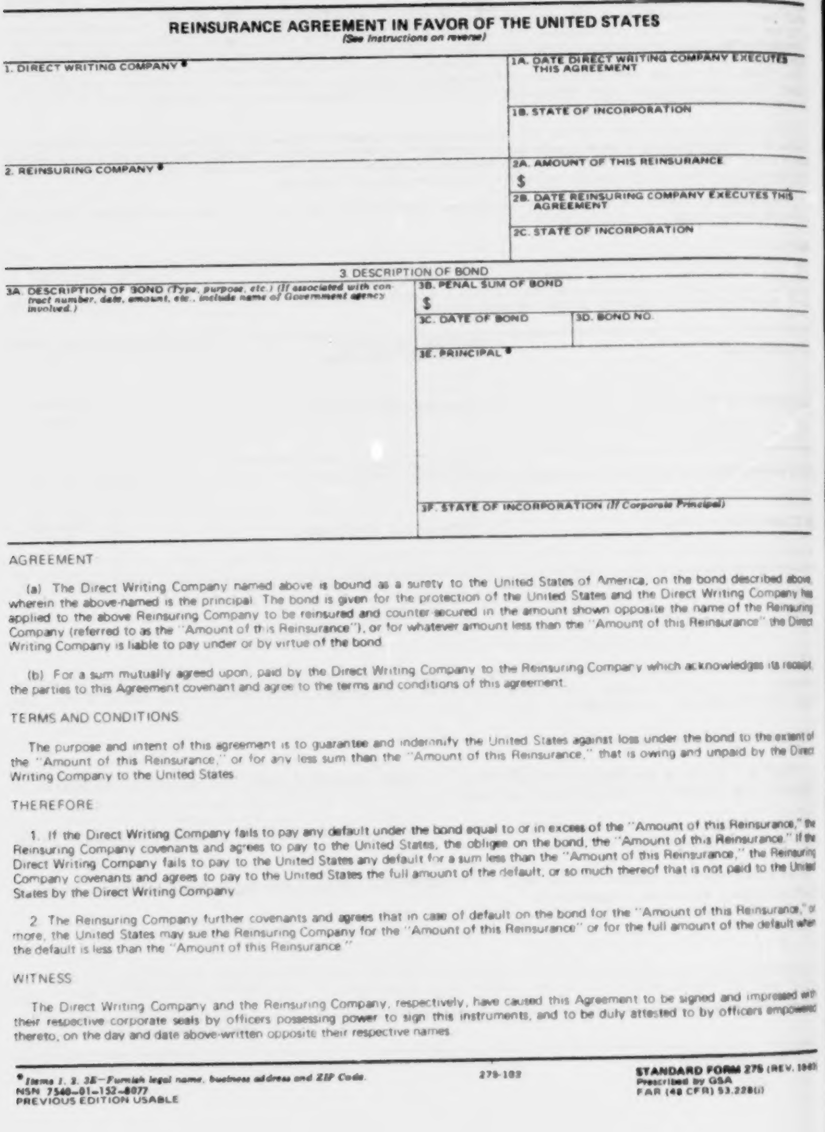
Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 274 BACK (REV. 10-83)

53.301-275 Standard Form 275, Reinsurance Agreement in Favor of the United States.



REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY *	2A. AMOUNT OF THIS REINSURANCE $
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF BOND

3A. DESCRIPTION OF BOND *(Type, purpose, etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)*	3B. PENAL SUM OF BOND $	
	3C. DATE OF BOND	3D. BOND NO.
	3E. PRINCIPAL *	
	3F. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT

(a) The Direct Writing Company named above is bound as a surety to the United States of America, on the bond described above wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

THEREFORE

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instruments, and to be duly attested to by officers empowered thereto, on the day and date above-written opposite their respective names.

---

* *Items 1, 2, 3E—Furnish legal name, business address and ZIP Code.*
NSN 7540-01-152-8077
PREVIOUS EDITION USABLE

275-103

STANDARD FORM 275 (REV. 198
Prescribed by GSA
FAR (48 CFR) 53.228(i)

4. DIRECT WRITING COMPANY		
4A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
4B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
5. REINSURING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(i). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as a percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

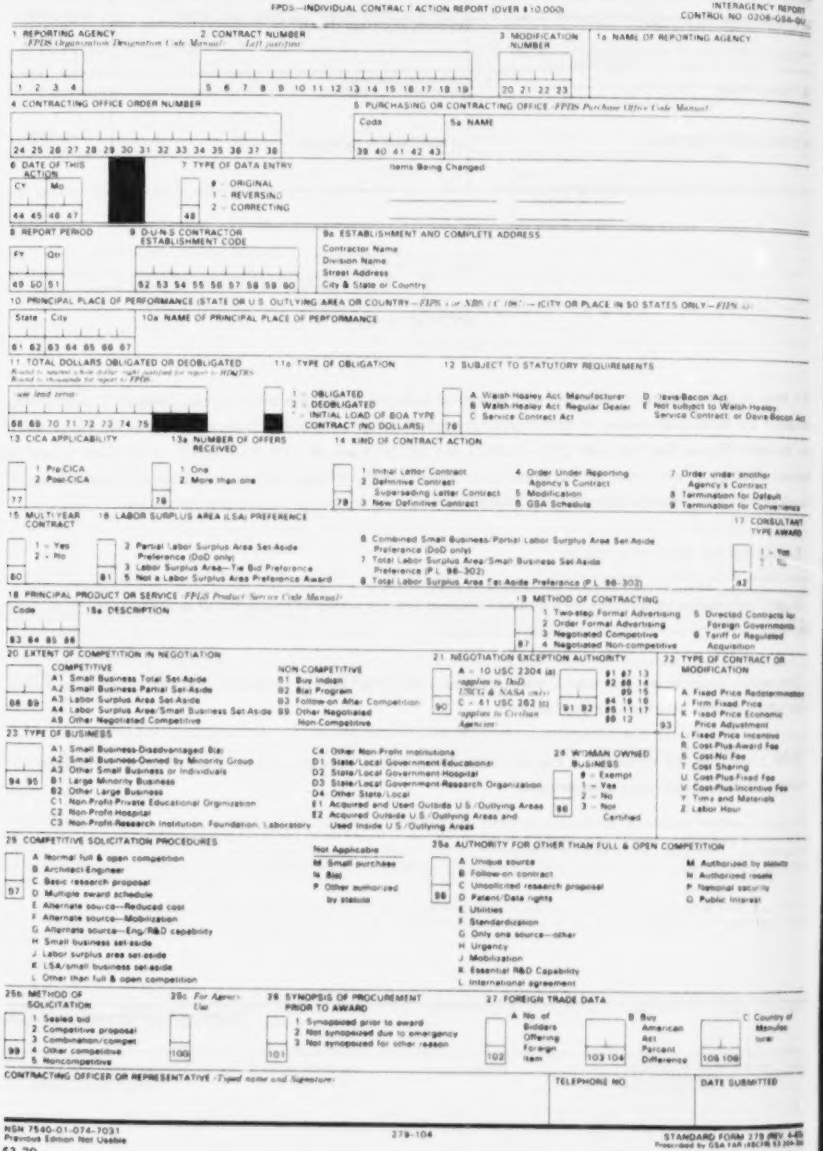
Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 275 BACK (REV. 10-83)

53.301-279 Standard Form 279, FPDS-Individual Contract Action Report (Over $10,000).



FPDS—INDIVIDUAL CONTRACT ACTION REPORT (OVER $10,000)

INTERAGENCY REPORT
CONTROL NO 0206-GSA-QU

1 REPORTING AGENCY (*FPDS Organization Designation Code Manual*) — 1 2 3 4

2 CONTRACT NUMBER (*Left justified*) — 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

3 MODIFICATION NUMBER — 20 21 22 23

1a NAME OF REPORTING AGENCY

4 CONTRACTING OFFICE ORDER NUMBER — 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38

5 PURCHASING OR CONTRACTING OFFICE (*FPDS Purchase Office Code Manual*) — Code 39 40 41 42 43

5a NAME

6 DATE OF THIS ACTION — CY Mo — 44 45 46 47

7 TYPE OF DATA ENTRY — 48
0 – ORIGINAL
1 – REVERSING
2 – CORRECTING

Items Being Changed

8 REPORT PERIOD — FY Qtr — 49 50 51

9 D-U-N-S CONTRACTOR ESTABLISHMENT CODE — 52 53 54 55 56 57 58 59 60

9a ESTABLISHMENT AND COMPLETE ADDRESS
Contractor Name
Division Name
Street Address
City & State or Country

10 PRINCIPAL PLACE OF PERFORMANCE (STATE OR U S OUTLYING AREA OR COUNTRY—*FIPS [illegible] or NBS [illegible]*)—(CITY OR PLACE IN 50 STATES ONLY—*FIPS [illegible]*)
State City — 61 62 63 64 65 66 67

10a NAME OF PRINCIPAL PLACE OF PERFORMANCE

11 TOTAL DOLLARS OBLIGATED OR DEOBLIGATED
Round to nearest whole dollar right justified for report to HDMTRS
Round to thousands for report to FPDS
(*use lead zeros*) — 68 69 70 71 72 73 74 75

11a TYPE OF OBLIGATION
1 – OBLIGATED
2 – DEOBLIGATED
[illegible] – INITIAL LOAD OF BOA TYPE CONTRACT (NO DOLLARS)

12 SUBJECT TO STATUTORY REQUIREMENTS — 76
A Walsh-Healey Act, Manufacturer
B Walsh-Healey Act, Regular Dealer
C Service Contract Act
D Davis-Bacon Act
E Not subject to Walsh-Healey, Service Contract, or Davis-Bacon Act

13 CICA APPLICABILITY — 77
1 Pre-CICA
2 Post-CICA

13a NUMBER OF OFFERS RECEIVED — 78
1 One
2 More than one

14 KIND OF CONTRACT ACTION — 79
1 Initial Letter Contract
2 Definitive Contract Superseding Letter Contract
3 New Definitive Contract
4 Order Under Reporting Agency's Contract
5 Modification
6 GSA Schedule
7 Order under another Agency's Contract
8 Termination for Default
9 Termination for Convenience

15 MULTIYEAR CONTRACT — 80
1 – Yes
2 – No

16 LABOR SURPLUS AREA (LSA) PREFERENCE — 81
2 Partial Labor Surplus Area Set-Aside Preference (DoD only)
3 Labor Surplus Area—Tie Bid Preference
5 Not a Labor Surplus Area Preference Award
6 Combined Small Business/Partial Labor Surplus Area Set-Aside Preference (DoD only)
7 Total Labor Surplus Area/Small Business Set-Aside Preference (P.L. 98-302)
8 Total Labor Surplus Area Set-Aside Preference (P.L. 98-302)

17 CONSULTANT TYPE AWARD — 82
1 – Yes
2 – No

18 PRINCIPAL PRODUCT OR SERVICE (*FPDS Product/Service Code Manual*) — Code 83 84 85 86

18a DESCRIPTION

19 METHOD OF CONTRACTING — 87
1 Two-step Formal Advertising
2 Order Formal Advertising
3 Negotiated Competitive
4 Negotiated Non-competitive
5 Directed Contracts for Foreign Governments
6 Tariff or Regulated Acquisition

20 EXTENT OF COMPETITION IN NEGOTIATION — 88 89
COMPETITIVE
A1 Small Business Total Set-Aside
A2 Small Business Partial Set-Aside
A3 Labor Surplus Area Set-Aside
A4 Labor Surplus Area/Small Business Set-Aside
A9 Other Negotiated Competitive
NON-COMPETITIVE
B1 Buy Indian
B2 8(a) Program
B3 Follow-on After Competition
B9 Other Negotiated Non-Competitive

21 NEGOTIATION EXCEPTION AUTHORITY — 90
A – 10 USC 2304 (a) (*applies to DoD, USCG & NASA only*)
C – 41 USC 252 (c) (*applies to Civilian Agencies*)
91 92
01 07 13
02 08 14
09 15
04 10 16
05 11 17
06 12

22 TYPE OF CONTRACT OR MODIFICATION — 93
A Fixed Price Redetermination
J Firm Fixed Price
K Fixed Price Economic Price Adjustment
L Fixed Price Incentive
R Cost-Plus-Award Fee
S Cost-No Fee
T Cost Sharing
U Cost-Plus-Fixed Fee
V Cost-Plus-Incentive Fee
Y Time and Materials
Z Labor Hour

23 TYPE OF BUSINESS — 94 95
A1 Small Business-Disadvantaged 8(a)
A2 Small Business-Owned by Minority Group
A3 Other Small Business or Individuals
B1 Large Minority Business
B2 Other Large Business
C1 Non-Profit-Private Educational Organization
C2 Non-Profit-Hospital
C3 Non-Profit-Research Institution, Foundation, Laboratory
C4 Other Non-Profit Institutions
D1 State/Local Government-Educational
D2 State/Local Government-Hospital
D3 State/Local Government-Research Organization
D4 Other State/Local
E1 Acquired and Used Outside U.S./Outlying Areas
E2 Acquired Outside U.S./Outlying Areas and Used Inside U.S./Outlying Areas

24 WOMAN OWNED BUSINESS — 96
0 – Exempt
1 – Yes
2 – No
3 – Not Certified

25 COMPETITIVE SOLICITATION PROCEDURES — 97
A Normal full & open competition
B Architect-Engineer
C Basic research proposal
D Multiple award schedule
E Alternate source—Reduced cost
F Alternate source—Mobilization
G Alternate source—Eng/R&D capability
H Small business set-aside
J Labor surplus area set-aside
K LSA/small business set-aside
L Other than full & open competition

Not Applicable
M Small purchase
N 8(a)
P Other authorized by statute

25a AUTHORITY FOR OTHER THAN FULL & OPEN COMPETITION — 98
A Unique source
B Follow-on contract
C Unsolicited research proposal
D Patent/Data rights
E Utilities
F Standardization
G Only one source—other
H Urgency
J Mobilization
K Essential R&D Capability
L International agreement
M Authorized by statute
N Authorized resale
P National security
Q Public interest

25b METHOD OF SOLICITATION — 99
1 Sealed bid
2 Competitive proposal
3 Combination/compet
4 Other competitive
5 Noncompetitive

25c *For Agency Use* — 100

26 SYNOPSIS OF PROCUREMENT PRIOR TO AWARD — 101
1 Synopsized prior to award
2 Not synopsized due to emergency
3 Not synopsized for other reason

27 FOREIGN TRADE DATA
A No. of Bidders Offering Foreign Item — 102
B Buy American Act Percent Difference — 103 104
C Country of Manufacture — 105 106

CONTRACTING OFFICER OR REPRESENTATIVE (*Typed name and Signature*)

TELEPHONE NO

DATE SUBMITTED

NSN 7540-01-074-7031
Previous Edition Not Usable

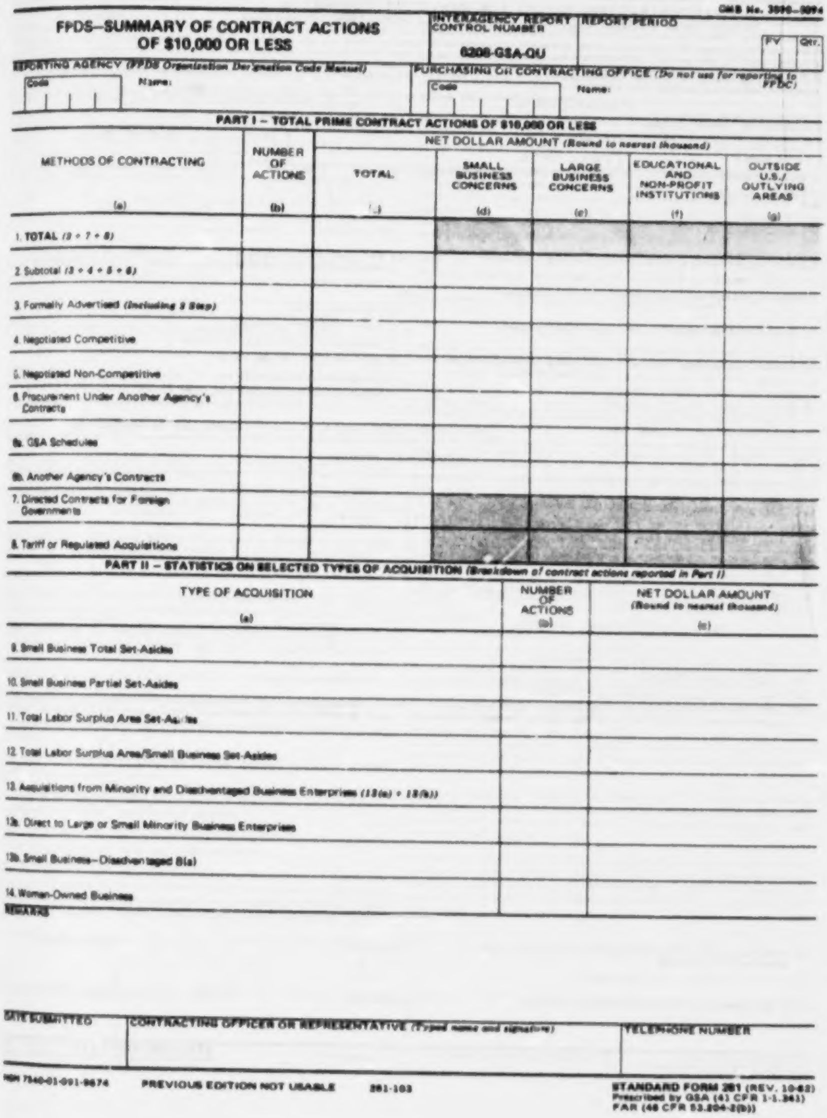
279-104

STANDARD FORM 279 (REV. 4-85)
Prescribed by GSA FAR (48 CFR) 53.[illegible]

53-70

[53 FR 43396, Oct. 26, 1988]

53.301-281 Standard Form 281, FPDS-Summary of Contract Actions of $10,000 or Less.



OMB No. 3090-0094

FPDS–SUMMARY OF CONTRACT ACTIONS OF $10,000 OR LESS	INTERAGENCY REPORT CONTROL NUMBER 0208-GSA-QU	REPORT PERIOD FY ☐ Qtr. ☐
REPORTING AGENCY *(FPDS Organization Designation Code Manual)* Code ☐☐☐☐ Name:	PURCHASING OR CONTRACTING OFFICE *(Do not use for reporting to FPDC)* Code ☐☐☐☐☐ Name:	

PART I – TOTAL PRIME CONTRACT ACTIONS OF $10,000 OR LESS

METHODS OF CONTRACTING	NUMBER OF ACTIONS	NET DOLLAR AMOUNT *(Round to nearest thousand)*				
		TOTAL	SMALL BUSINESS CONCERNS	LARGE BUSINESS CONCERNS	EDUCATIONAL AND NON-PROFIT INSTITUTIONS	OUTSIDE U.S./ OUTLYING AREAS
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1. **TOTAL** *(2 + 7 + 8)*			▨	▨	▨	▨
2. Subtotal *(3 + 4 + 5 + 6)*						
3. Formally Advertised *(Including 2 Step)*						
4. Negotiated Competitive						
5. Negotiated Non-Competitive						
6. Procurement Under Another Agency's Contracts						
6a. GSA Schedules						
6b. Another Agency's Contracts						
7. Directed Contracts for Foreign Governments			▨	▨	▨	▨
8. Tariff or Regulated Acquisitions			▨	▨	▨	▨

PART II – STATISTICS ON SELECTED TYPES OF ACQUISITION *(Breakdown of contract actions reported in Part I)*

TYPE OF ACQUISITION (a)	NUMBER OF ACTIONS (b)	NET DOLLAR AMOUNT *(Round to nearest thousand)* (c)
9. Small Business Total Set-Asides		
10. Small Business Partial Set-Asides		
11. Total Labor Surplus Area Set-Asides		
12. Total Labor Surplus Area/Small Business Set-Asides		
13. Acquisitions from Minority and Disadvantaged Business Enterprises *(13(a) + 13(b))*		
13a. Direct to Large or Small Minority Business Enterprises		
13b. Small Business—Disadvantaged 8(a)		
14. Women-Owned Business		

REMARKS

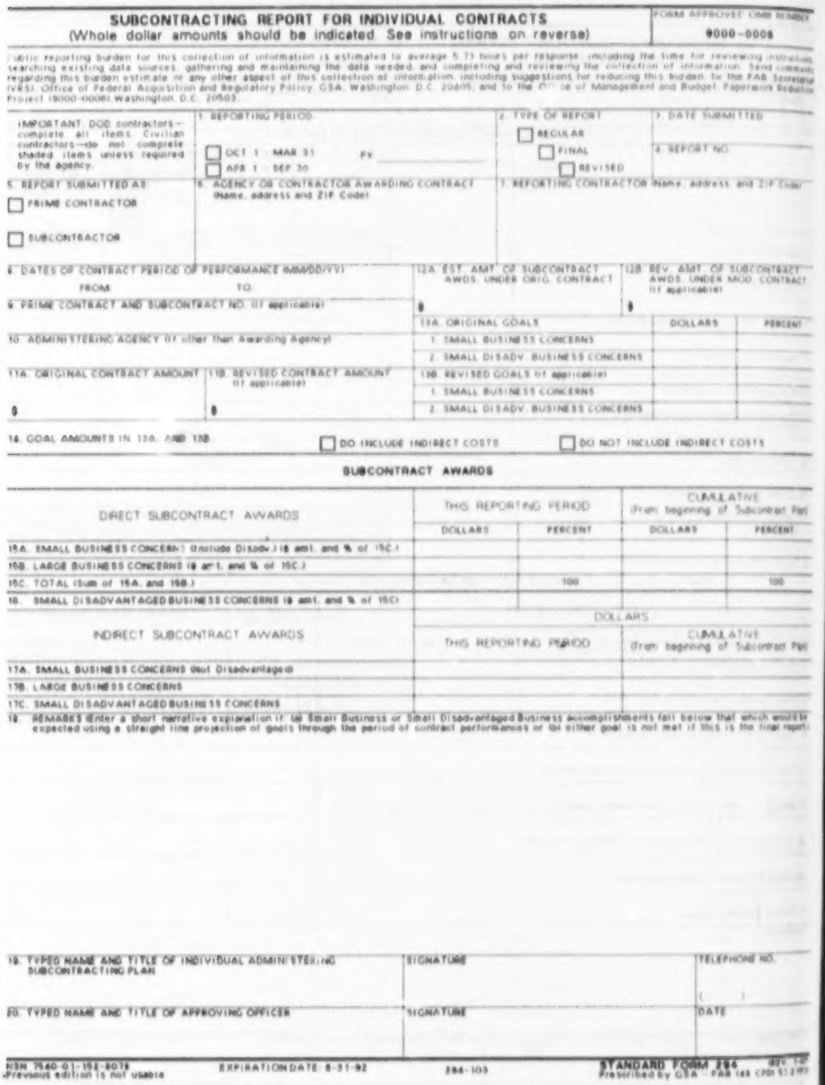
DATE SUBMITTED	CONTRACTING OFFICER OR REPRESENTATIVE *(Typed name and signature)*	TELEPHONE NUMBER

NSN 7540-01-091-9674 PREVIOUS EDITION NOT USABLE 281-103

STANDARD FORM 281 (REV. 10-82)
Prescribed by GSA (41 CFR 1-1.361)
FAR (48 CFR 53.204-2(b))

[53 FR 43397, Oct. 26, 1988]

53.301-294 Subcontracting Reporting for Individual Contracts.



SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(Whole dollar amounts should be indicated. See instructions on reverse)

FORM APPROVED OMB NUMBER
9000-0006

Public reporting burden for this collection of information is estimated to average 5.73 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0006), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.

1. REPORTING PERIOD
☐ OCT 1 - MAR 31 FY ______
☐ APR 1 - SEP 30

2. TYPE OF REPORT
☐ REGULAR
☐ FINAL
☐ REVISED

3. DATE SUBMITTED

4. REPORT NO.

5. REPORT SUBMITTED AS:
☐ PRIME CONTRACTOR
☐ SUBCONTRACTOR

6. AGENCY OR CONTRACTOR AWARDING CONTRACT (Name, address and ZIP Code)

7. REPORTING CONTRACTOR (Name, address and ZIP Code)

8. DATES OF CONTRACT PERIOD OF PERFORMANCE (MM/DD/YY)
FROM TO

9. PRIME CONTRACT AND SUBCONTRACT NO. (If applicable)

10. ADMINISTERING AGENCY (If other than Awarding Agency)

11A. ORIGINAL CONTRACT AMOUNT
$

11B. REVISED CONTRACT AMOUNT (If applicable)
$

12A. EST. AMT. OF SUBCONTRACT AWDS. UNDER ORIG. CONTRACT
$

12B. REV. AMT. OF SUBCONTRACT AWDS. UNDER MOD. CONTRACT (If applicable)
$

13A. ORIGINAL GOALS	DOLLARS	PERCENT
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		
13B. REVISED GOALS (If applicable)		
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		

14. GOAL AMOUNTS IN 13A. AND 13B ☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

DIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD		CUMULATIVE (From beginning of Subcontract Pe	
	DOLLARS	PERCENT	DOLLARS	PERCENT
15A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 15C.)				
15B. LARGE BUSINESS CONCERNS ($ amt. and % of 15C.)				
15C. TOTAL (Sum of 15A. and 15B.)		100		100
16. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 15C)				

INDIRECT SUBCONTRACT AWARDS	DOLLARS	
	THIS REPORTING PERIOD	CUMULATIVE (From beginning of Subcontract Pe
17A. SMALL BUSINESS CONCERNS (Not Disadvantaged)		
17B. LARGE BUSINESS CONCERNS		
17C. SMALL DISADVANTAGED BUSINESS CONCERNS		

18. REMARKS (Enter a short narrative explanation if: (a) Small Business or Small Disadvantaged Business accomplishments fall below that which would be expected using a straight line projection of goals through the period of contract performance; or (b) either goal is not met if this is the final report)

19. TYPED NAME AND TITLE OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	SIGNATURE	TELEPHONE NO. ( )
20. TYPED NAME AND TITLE OF APPROVING OFFICER	SIGNATURE	DATE

NSN 7540-01-152-8078
Previous edition is not usable

EXPIRATION DATE: 8-31-92

294-103

STANDARD FORM 294 (REV. 10
Prescribed by GSA - FAR (48 CFR) 53.2

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that (a) hold one or more contracts over $500,000 ($1 million for construction), and (b) are required to report subcontract awards to small business (SB) and small disadvantaged business (SDB) concerns under a subcontracting plan pursuant to the Small Business Act of 1958.

2. Reports shall be submitted to the contracting officer semi-annually during the period of contract performance. A separate report is required for each contract at contract completion. This report is due by the 30th day of the month following the close of the reporting periods, in accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer. Reports are required when due, including negative reports (i.e., when there has been no subcontracting activity or there has been no change from the last reporting period).

3. This report should not be submitted by small business concerns.

4. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report (SF 295) is required for commercial products in accordance with instructions on that form.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. All dollar amounts shall be rounded to the the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

SPECIFIC INSTRUCTIONS (for items which are not self explanatory)

ITEM 1: Check the appropriate block for the reporting period through which the report is being submitted and enter the Federal fiscal year (October 1 through September 30). Leave blank if this is a final report.

ITEM 2: Check whether report is a regular report or final report and/or is a revision.

ITEM 4: Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1.

ITEM 5: Check whether the reporting contractor is reporting as a Federal prime contractor or a subcontractor.

ITEM 6: Enter the name and address of the Federal Department or Agency awarding the contract, or the prime contractor awarding the subcontract.

ITEM 7: Enter the name and address of the contractor submitting the report.

ITEM 9: Enter the beginning and projected ending dates of the period of performance of the contract, including priced option periods.

ITEM 10: Identify the Federal agency administering the contract if other than the awarding agency. If DOD is the administering agency, identify the appropriate military department, i.e., Army, Navy, Air Force, or Defense Logistics Agency. This item is not required if reporting as a subcontractor.

ITEM 11A: Enter the total dollar value of the original contract. (State the estimated cost if cost-type contract, price if fixed-price contract, and maximum contract amount if indefinite quantity contract. Include all priced options.)

ITEM 11B: If the dollar value of the original contract has been modified, enter the revised contract amount.

ITEM 12A: Enter the estimated dollar value of subcontracts as set forth in the Subcontracting Plan in the original contract.

ITEM 12B: If the dollar value of the Subcontracting Plan has been modified, enter the revised amount under the modified contract.

ITEM 13A: Enter in the appropriate blocks the dollar amount and percent of the reporting contractor's total planned subcontract awards contractually agreed upon as goals for subcontracting with SB and SDB concerns. NOTE: In 13A(1) the amounts entered should include planned subcontracting with both SB and SDB concerns. In 13A(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs) in 13A(1) and 13A(2).)

ITEM 13B: If the original goals agreed upon at contract award have been revised as a result of contract modifications, the amounts entered should reflect those revised goals. NOTE: In 13B(1), the amounts should include planned subcontracting with both SB and SDB concerns, if applicable. In 13B(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to HBCUs/MIs in 13B(1) and 13B(2).)

ITEM 14: Check the appropriate block to indicate whether indirect awards are included in the goal amounts entered in items 13A and 13B as specified in the Subcontracting Plan.

ITEM 15A: Enter the dollar amount and percent of subcontracting with SDB concerns, including subcontracting with SDB concerns for this period and cumulatively. This item reflects progress toward Small Business goal accomplishment indicated in items 13A(1) or 13B(1) (if applicable) and includes indirect awards if such costs are included in goal amounts. For DOD contracts include subcontract awards to HBCUs/MIs.

ITEM 15B: Enter the amounts for subcontracting with large business concerns (excluding subcontracts with non-profit, educational institutions, and state/local governments) for this period and cumulatively. Include indirect awards if such costs are included in goal amounts.

ITEM 15C: Total the dollar amounts of items 15A and 15B.

ITEM 16: Enter the dollar amount of subcontracting with SDB concerns only (for DOD include subcontracts with HBCUs and MIs) and the percent that this amount represents of total subcontracting for this period and cumulatively. This item reflects progress toward Small Disadvantaged Business goal accomplishment as indicated in item 13A(2) or 13B(2) (if applicable) and includes indirect awards if such costs are included in goal amounts.

ITEM 17: For DOD activities, if indirect awards are included in goal amounts (as indicated in item 14) enter the dollar amount of indirect subcontracting with SB (including SDB and HBCUs/MIs), Large Business, and SDB concerns (including HBCUs/MIs). These amounts are subsets of items 15A, 15B, and 16, respectively, and represent the portion of goal achievement being accomplished by indirect subcontracting.

ITEM 18: Enter the name, title, signature and telephone number of the reporting contractor's administrator responsible for monitoring the Subcontracting Plan.

ITEM 20: The approving officer shall be the senior official of the company, division, or subdivision (plant or profit center) responsible for contract performance.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

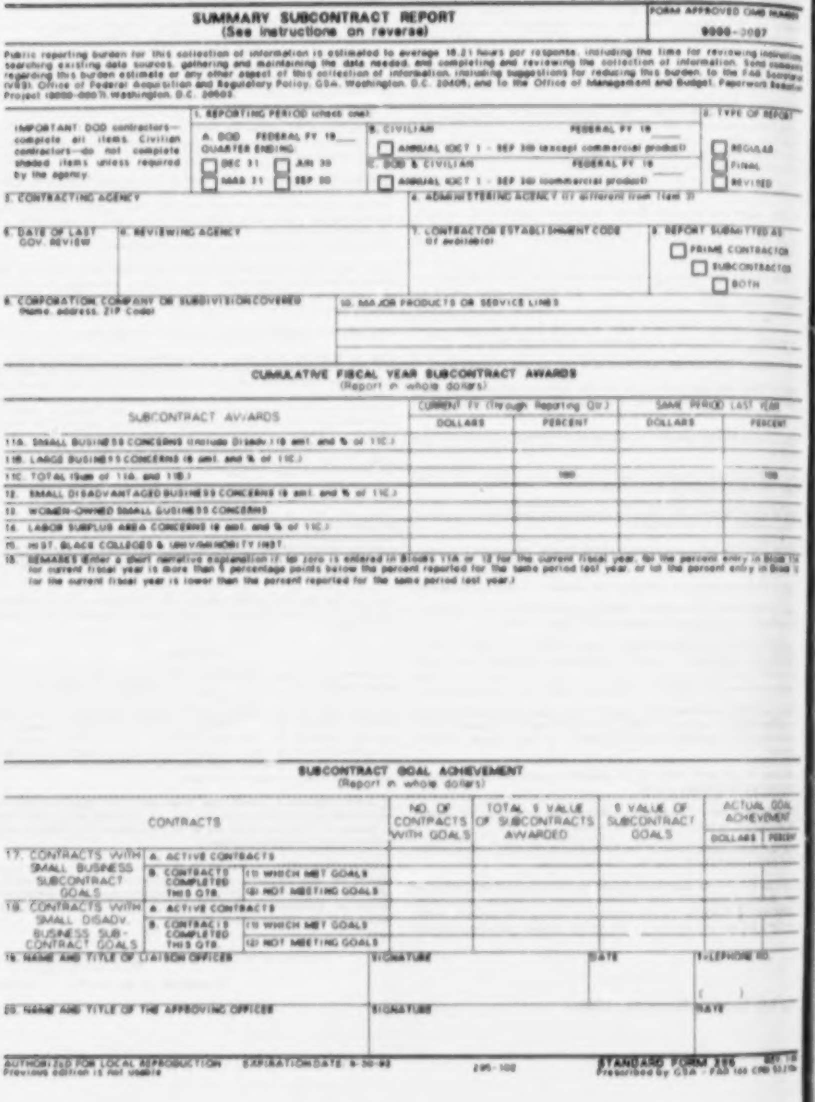
3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including the allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

STANDARD FORM 294 (REV. 1-90) BACK

[55 FR 25549, June 21, 1990]

53.301-295 Summary Subcontract Report.



SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

FORM APPROVED OMB NUMBER
9000-0007

Public reporting burden for this collection of information is estimated to average 16.21 hours per response, including the time for reviewing instruction searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send commen regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretar (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reductio Project (9000-0007), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.

1. REPORTING PERIOD (check one)
A. DOD FEDERAL FY 19___ QUARTER ENDING
☐ DEC 31 ☐ JUN 30
☐ MAR 31 ☐ SEP 30
B. CIVILIAN FEDERAL FY 19___
☐ ANNUAL (OCT 1 - SEP 30) (except commercial product)
C. DOD & CIVILIAN FEDERAL FY 19___
☐ ANNUAL (OCT 1 - SEP 30) (commercial product)

2. TYPE OF REPORT
☐ REGULAR
☐ FINAL
☐ REVISED

3. CONTRACTING AGENCY

4. ADMINISTERING AGENCY (if different from item 3)

5. DATE OF LAST GOV. REVIEW

6. REVIEWING AGENCY

7. CONTRACTOR ESTABLISHMENT CODE (if available)

8. REPORT SUBMITTED AS
☐ PRIME CONTRACTOR
☐ SUBCONTRACTOR
☐ BOTH

9. CORPORATION, COMPANY OR SUBDIVISION COVERED (Name, address, ZIP Code)

10. MAJOR PRODUCTS OR SERVICE LINES

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report in whole dollars)

SUBCONTRACT AWARDS	CURRENT FY (Through Reporting Qtr.)		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
11A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 11C.)				
11B. LARGE BUSINESS CONCERNS ($ amt. and % of 11C.)				
11C. TOTAL (Sum of 11A. and 11B.)		100		100
12. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 11C.)				
13. WOMEN-OWNED SMALL BUSINESS CONCERNS				
14. LABOR SURPLUS AREA CONCERNS ($ amt. and % of 11C.)				
15. HIST. BLACK COLLEGES & UNIV/MINORITY INST.				

16. REMARKS (Enter a short narrative explanation if: (a) zero is entered in Blocks 11A or 12 for the current fiscal year, (b) the percent entry in Block 11 for current fiscal year is more than 5 percentage points below the percent reported for the same period last year, or (c) the percent entry in Block 1 for the current fiscal year is lower than the percent reported for the same period last year.)

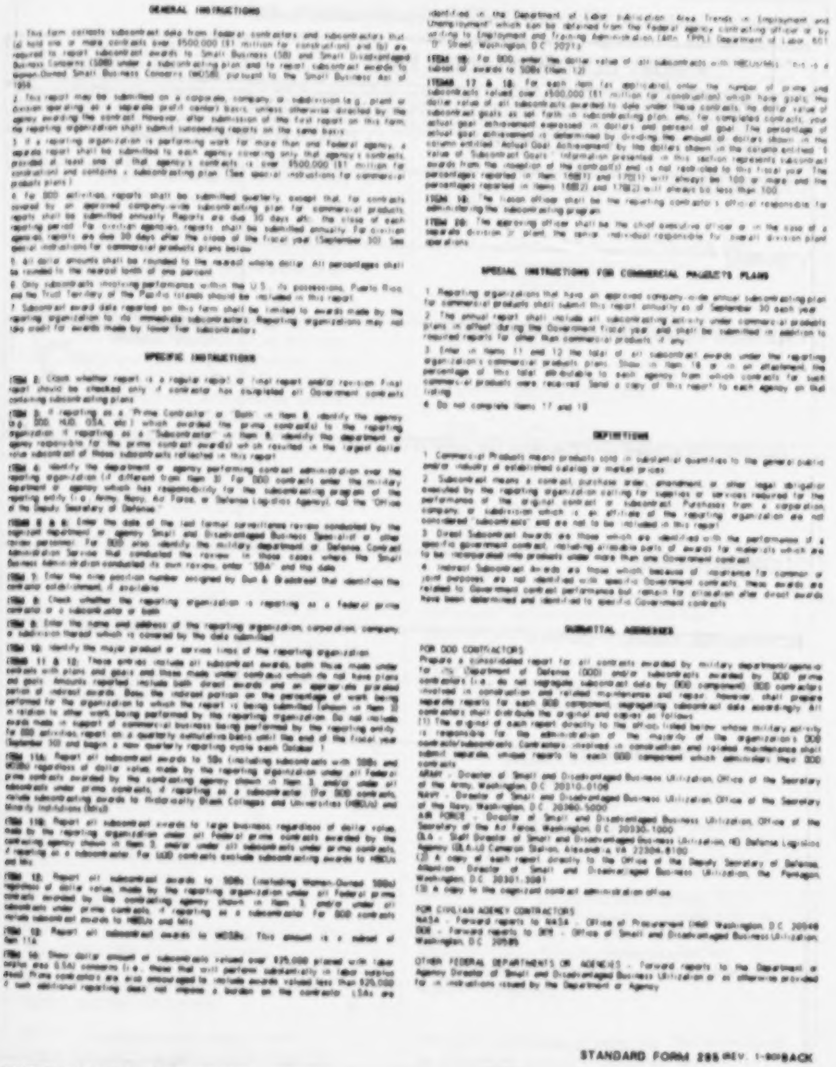
SUBCONTRACT GOAL ACHIEVEMENT
(Report in whole dollars)

CONTRACTS			NO. OF CONTRACTS WITH GOALS	TOTAL $ VALUE OF SUBCONTRACTS AWARDED	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT	
						DOLLARS	PERCEN
17. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					
18. CONTRACTS WITH SMALL DISADV. BUSINESS SUB-CONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					

19. NAME AND TITLE OF LIAISON OFFICER
SIGNATURE
DATE
TELEPHONE NO.
(   )

20. NAME AND TITLE OF THE APPROVING OFFICER
SIGNATURE
DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable
EXPIRATION DATE: 9-30-92
295-102
STANDARD FORM 295
Prescribed by GSA - FAR (48 CFR 53.2



GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that (a) hold one or more contracts over $500,000 ($1 million for construction) and (b) are required to report subcontract awards to Small Business (SB) and Small Disadvantaged Business Concerns (SDB) under a subcontracting plan and to report subcontract awards to Women-Owned Small Business Concerns (WOSB) pursuant to the Small Business Act of 1958.

2. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center basis), unless otherwise directed by the agency awarding the contract. However, after submission of the first report on this form, the reporting organization shall submit succeeding reports on the same basis.

3. If a reporting organization is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 ($1 million for construction) and contains a subcontracting plan. (See special instructions for commercial products plans.)

4. For DOD activities, reports shall be submitted quarterly except that, for contracts covered by an approved company-wide subcontracting plan for commercial products, reports shall be submitted annually. Reports are due 30 days after the close of each reporting period. For civilian agencies, reports shall be submitted annually. For civilian agencies, reports are due 30 days after the close of the fiscal year (September 30). See special instructions for commercial products plans below.

5. All dollar amounts shall be rounded to the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

6. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

7. Subcontract award data reported on this form shall be limited to awards made by the reporting organization to its immediate subcontractors. Reporting organizations may not take credit for awards made by lower tier subcontractors.

SPECIFIC INSTRUCTIONS

ITEM 2: Check whether report is a regular report or final report and/or revision. Final report should be checked only if contractor has completed all Government contracts containing subcontracting plans.

ITEM 3: If reporting as a "Prime Contractor" or "Both" in Item 8, identify the agency (e.g., DOD, HUD, GSA, etc.) which awarded the prime contract(s) to the reporting organization. If reporting as a "Subcontractor" in Item 8, identify the department or agency responsible for the prime contract award(s) which resulted in the largest dollar value subcontract of those subcontracts reflected in this report.

ITEM 4: Identify the department or agency performing contract administration over the reporting organization (if different from Item 3). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the reporting entity (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."

ITEMS 5 & 6: Enter the date of the last formal surveillance review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD also identify the military department or Defense Contract Administration Service that conducted the review. In those cases where the Small Business Administration conducted its own review, enter "SBA" and the date.

ITEM 7: Enter the nine position number assigned by Dun & Bradstreet that identifies the contractor establishment, if available.

ITEM 8: Check whether the reporting organization is reporting as a Federal prime contractor or a subcontractor or both.

ITEM 9: Enter the name and address of the reporting organization, corporation, company, or subdivision thereof which is covered by the data submitted.

ITEM 10: Identify the major product or service lines of the reporting organization.

ITEMS 11 & 12: These entries include all subcontract awards, both those made under contracts with plans and goals and those made under contracts which do not have plans and goals. Amounts reported include both direct awards and an appropriate prorated portion of indirect awards. Base the indirect portion on the percentage of work being performed for the organization to which the report is being submitted (shown in Item 3) in relation to other work being performed by the reporting organization. Do not include awards made in support of commercial business being performed by the reporting entity. For DOD activities, report on a quarterly cumulative basis until the end of the fiscal year (September 30) and begin a new quarterly reporting cycle each October 1.

ITEM 11A: Report all subcontract awards to SBs (including subcontracts with SDBs and WOSBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. (For DOD contracts, include subcontracting awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).)

ITEM 11B: Report all subcontract awards to large business regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts exclude subcontracting awards to HBCUs and MIs.

ITEM 12: Report all subcontract awards to SDBs (including Women-Owned SDBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts include subcontract awards to HBCUs and MIs.

ITEM 13: Report all subcontract awards to WOSBs. This amount is a subset of Item 11A.

ITEM 15: Show dollar amount of subcontracts valued over $25,000 placed with labor surplus area (LSA) concerns (i.e., those that will perform substantially in labor surplus areas). Prime contractors are also encouraged to include awards valued less than $25,000 if such additional reporting does not impose a burden on the contractor. LSAs are identified in the Department of Labor publication "Area Trends in Employment and Unemployment" which can be obtained from the Federal agency contracting officer or by writing to Employment and Training Administration (Attn: TEPL) Department of Labor, 601 "D" Street, Washington, D.C. 20213.

ITEM 16: For DOD, enter the dollar value of all subcontracts with HBCUs/MIs. This is a subset of awards to SDBs (Item 12).

ITEMS 17 & 18: For each item (as applicable), enter the number of prime and subcontracts valued over $500,000 ($1 million for construction) which have goals, the dollar value of all subcontracts awarded to date under these contracts, the dollar value of subcontract goals as set forth in subcontracting plan, and, for completed contracts, your actual goal achievement expressed in dollars and percent of goal. The percentage of actual goal achievement is determined by dividing the amount of dollars shown in the column entitled "Actual Goal Achievement" by the dollars shown in the column entitled "$ Value of Subcontract Goals." Information presented in this section represents subcontract awards from the inception of the contract(s) and is not restricted to this fiscal year. The percentages reported in Item 16(B)(1) and 17(B)(1) will always be 100 or more and the percentages reported in Items 16(B)(2) and 17(B)(2) will always be less than 100.

ITEM 19: The liaison officer shall be the reporting contractor's official responsible for administering the subcontracting program.

ITEM 20: The approving officer shall be the chief executive officer or, in the case of a separate division or plant, the senior individual responsible for overall division/plant operations.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. Reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall submit this report annually as of September 30 each year.

2. The annual report shall include all subcontracting activity under commercial products plans in effect during the Government fiscal year and shall be submitted in addition to required reports for other than commercial products, if any.

3. Enter in Items 11 and 12 the total of all subcontract awards under the reporting organization's commercial products plans. Show in Item 18 or in an attachment, the percentage of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each agency on that listing.

4. Do not complete Items 17 and 18.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts. These awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES

FOR DOD CONTRACTORS

Prepare a consolidated report for all contracts awarded by military departments/agencies for the Department of Defense (DOD) and/or subcontracts awarded by DOD prime contractors (i.e., do not segregate subcontract data by DOD component). DOD contractors involved in construction and related maintenance and repair, however, shall prepare separate reports for each DOD component, segregating subcontract data accordingly. All contractors shall distribute the original and copies as follows:

(1) The original of each report directly to the office listed below whose military activity is responsible for the administration of the majority of the organization's DOD contracts/subcontracts. Contractors involved in construction and related maintenance shall submit separate, unique reports to each DOD component which administers their DOD contracts.

ARMY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Washington, D.C. 20310-0106

NAVY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360-5000

AIR FORCE - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Air Force, Washington, D.C. 20330-1000

DLA - Staff Director of Small and Disadvantaged Business Utilization, HQ Defense Logistics Agency (DLA-U) Cameron Station, Alexandria, VA 22304-6100

(2) A copy of each report directly to the Office of the Deputy Secretary of Defense, Attention: Director of Small and Disadvantaged Business Utilization, the Pentagon, Washington, D.C. 20301-3061

(3) A copy to the cognizant contract administration office.

FOR CIVILIAN AGENCY CONTRACTORS

NASA - Forward reports to NASA - Office of Procurement (HW) Washington, D.C. 20546

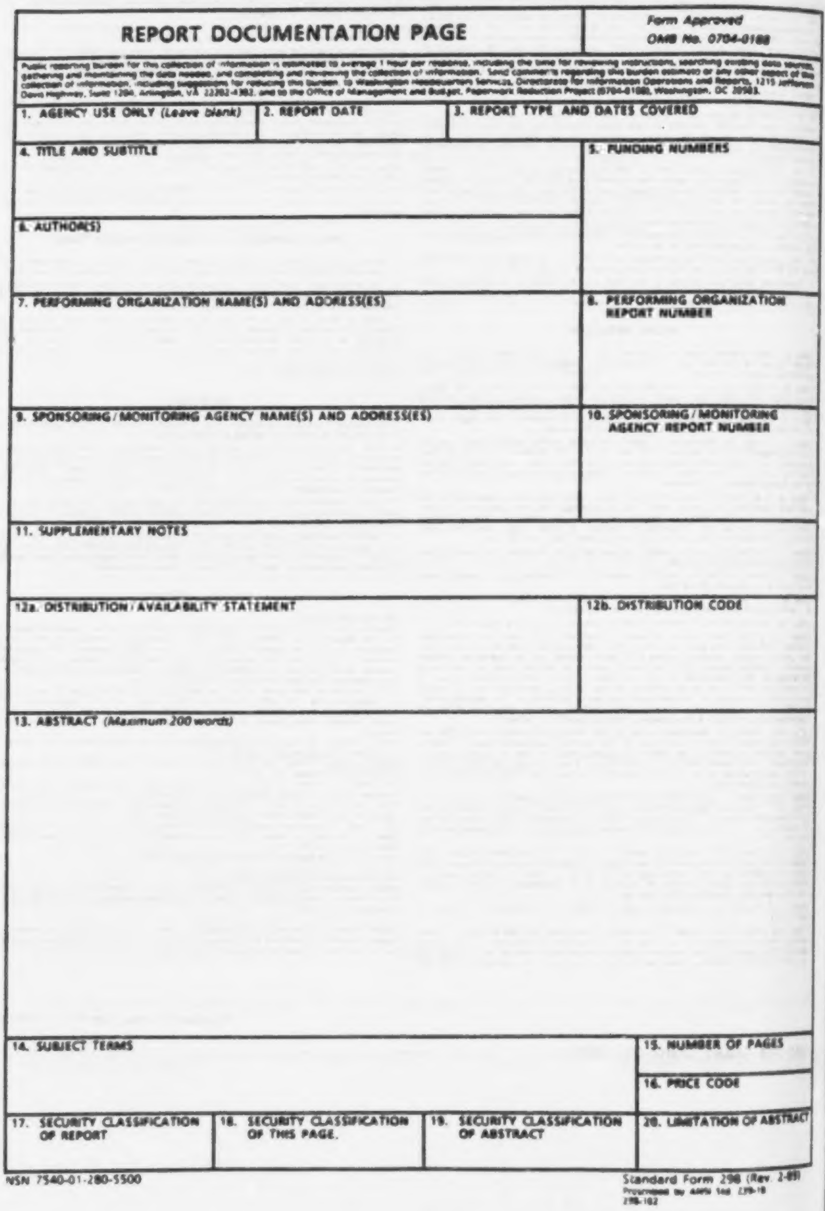
DOE - Forward reports to DOE - Office of Small and Disadvantaged Business Utilization, Washington, D.C. 20585

OTHER FEDERAL DEPARTMENTS OR AGENCIES - Forward reports to the Department or Agency Director of Small and Disadvantaged Business Utilization or as otherwise provided for in instructions issued by the Department or Agency.

STANDARD FORM 295 (REV. 1-90) BACK

[55 FR 25551, June 21, 1990]

53.301-298 Standard Form 298, Report Documentation Page.



REPORT DOCUMENTATION PAGE

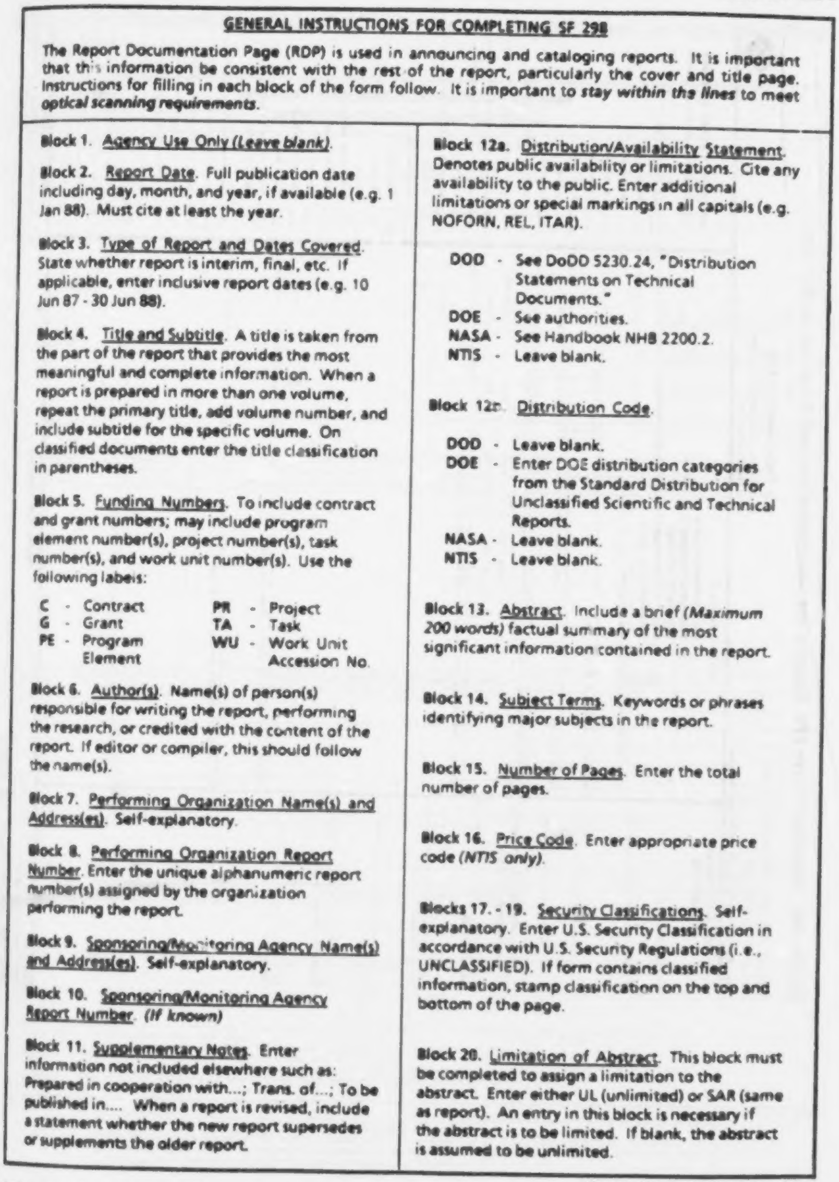
Form Approved
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

1. AGENCY USE ONLY *(Leave blank)*
2. REPORT DATE
3. REPORT TYPE AND DATES COVERED
4. TITLE AND SUBTITLE
5. FUNDING NUMBERS
6. AUTHOR(S)
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)
8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)
10. SPONSORING/MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES
12a. DISTRIBUTION/AVAILABILITY STATEMENT
12b. DISTRIBUTION CODE
13. ABSTRACT *(Maximum 200 words)*
14. SUBJECT TERMS
15. NUMBER OF PAGES
16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT
18. SECURITY CLASSIFICATION OF THIS PAGE
19. SECURITY CLASSIFICATION OF ABSTRACT
20. LIMITATION OF ABSTRACT

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. Z39-18
298-102



GENERAL INSTRUCTIONS FOR COMPLETING SF 298

The Report Documentation Page (RDP) is used in announcing and cataloging reports. It is important that this information be consistent with the rest of the report, particularly the cover and title page. Instructions for filling in each block of the form follow. It is important to ***stay within the lines*** to meet ***optical scanning requirements.***

Block 1. Agency Use Only *(Leave blank)*.

Block 2. Report Date. Full publication date including day, month, and year, if available (e.g. 1 Jan 88). Must cite at least the year.

Block 3. Type of Report and Dates Covered. State whether report is interim, final, etc. If applicable, enter inclusive report dates (e.g. 10 Jun 87 - 30 Jun 88).

Block 4. Title and Subtitle. A title is taken from the part of the report that provides the most meaningful and complete information. When a report is prepared in more than one volume, repeat the primary title, add volume number, and include subtitle for the specific volume. On classified documents enter the title classification in parentheses.

Block 5. Funding Numbers. To include contract and grant numbers; may include program element number(s), project number(s), task number(s), and work unit number(s). Use the following labels:

C - Contract
G - Grant
PE - Program Element
PR - Project
TA - Task
WU - Work Unit Accession No.

Block 6. Author(s). Name(s) of person(s) responsible for writing the report, performing the research, or credited with the content of the report. If editor or compiler, this should follow the name(s).

Block 7. Performing Organization Name(s) and Address(es). Self-explanatory.

Block 8. Performing Organization Report Number. Enter the unique alphanumeric report number(s) assigned by the organization performing the report.

Block 9. Sponsoring/Monitoring Agency Name(s) and Address(es). Self-explanatory.

Block 10. Sponsoring/Monitoring Agency Report Number. *(If known)*

Block 11. Supplementary Notes. Enter information not included elsewhere such as: Prepared in cooperation with...; Trans. of...; To be published in.... When a report is revised, include a statement whether the new report supersedes or supplements the older report.

Block 12a. Distribution/Availability Statement. Denotes public availability or limitations. Cite any availability to the public. Enter additional limitations or special markings in all capitals (e.g. NOFORN, REL, ITAR).

DOD - See DoDD 5230.24, "Distribution Statements on Technical Documents."
DOE - See authorities.
NASA - See Handbook NHB 2200.2.
NTIS - Leave blank.

Block 12b. Distribution Code.

DOD - Leave blank.
DOE - Enter DOE distribution categories from the Standard Distribution for Unclassified Scientific and Technical Reports.
NASA - Leave blank.
NTIS - Leave blank.

Block 13. Abstract. Include a brief *(Maximum 200 words)* factual summary of the most significant information contained in the report.

Block 14. Subject Terms. Keywords or phrases identifying major subjects in the report.

Block 15. Number of Pages. Enter the total number of pages.

Block 16. Price Code. Enter appropriate price code *(NTIS only)*.

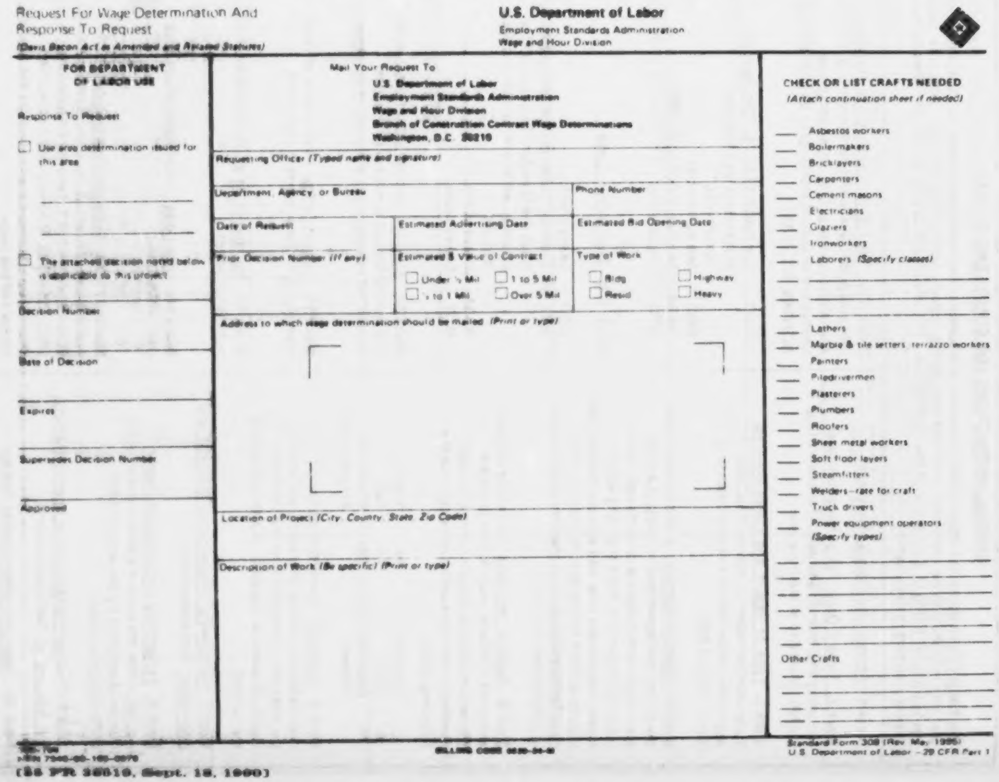
Blocks 17. - 19. Security Classifications. Self-explanatory. Enter U.S. Security Classification in accordance with U.S. Security Regulations (i.e., UNCLASSIFIED). If form contains classified information, stamp classification on the top and bottom of the page.

Block 20. Limitation of Abstract. This block must be completed to assign a limitation to the abstract. Enter either UL (unlimited) or SAR (same as report). An entry in this block is necessary if the abstract is to be limited. If blank, the abstract is assumed to be unlimited.

Standard Form 298 Back (Rev. 2-89)

[55 FR 3890, Feb. 5, 1990]

53.301-308 Standard Form 308, Request for Determination and Response to Request.



Request For Wage Determination And
Response To Request
(Davis Bacon Act as Amended and Related Statutes)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

FOR DEPARTMENT OF LABOR USE

Response To Request

☐ Use area determination issued for this area

☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Mail Your Request To

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

Requesting Officer *(Typed name and signature)*

Department, Agency, or Bureau

Phone Number

Date of Request

Estimated Advertising Date

Estimated Bid Opening Date

Prior Decision Number *(If any)*

Estimated $ Value of Contract

☐ Under ½ Mil
☐ ½ to 1 Mil
☐ 1 to 5 Mil
☐ Over 5 Mil

Type of Work

☐ Bldg
☐ Resid
☐ Highway
☐ Heavy

Address to which wage determination should be mailed *(Print or type)*

Location of Project *(City, County, State, Zip Code)*

Description of Work *(Be specific) (Print or type)*

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

- ___ Asbestos workers
- ___ Boilermakers
- ___ Bricklayers
- ___ Carpenters
- ___ Cement masons
- ___ Electricians
- ___ Glaziers
- ___ Ironworkers
- ___ Laborers *(Specify classes)*
- ___ ______
- ___ ______
- ___ ______
- ___ Lathers
- ___ Marble & tile setters, terrazzo workers
- ___ Painters
- ___ Piledrivermen
- ___ Plasterers
- ___ Plumbers
- ___ Roofers
- ___ Sheet metal workers
- ___ Soft floor layers
- ___ Steamfitters
- ___ Welders—rate for craft
- ___ Truck drivers
- ___ Power equipment operators *(Specify types)*
- ___ ______
- ___ ______
- ___ ______
- ___ ______
- ___ ______
- ___ ______

Other Crafts

- ___ ______
- ___ ______
- ___ ______
- ___ ______

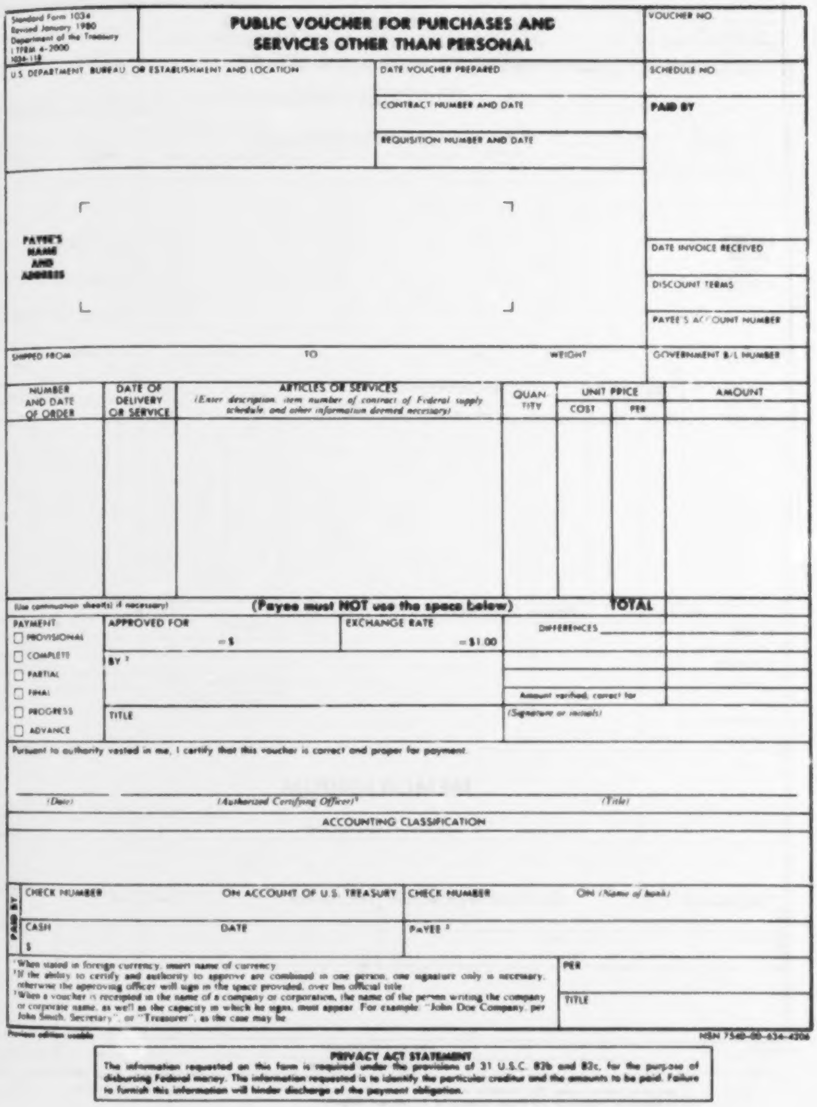
[illegible]
NSN 7540-00-[illegible]

BILLING CODE [illegible]

Standard Form 308 (Rev. May 1985)
U.S. Department of Labor—29 CFR Part 1

[55 FR 38516, Sept. 18, 1990]

53.301-1034 Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal.



Standard Form 1034
Revised January 1980
Department of the Treasury
1 TFRM 4-2000
1034-118

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

DATE VOUCHER PREPARED

SCHEDULE NO.

CONTRACT NUMBER AND DATE

PAID BY

REQUISITION NUMBER AND DATE

PAYEE'S NAME AND ADDRESS

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM   TO   WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract of Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** **TOTAL**

PAYMENT
☐ PROVISIONAL
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

APPROVED FOR = $

EXCHANGE RATE = $1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date)   (Authorized Certifying Officer)[2]   (Title)

ACCOUNTING CLASSIFICATION

PAID BY

CHECK NUMBER   ON ACCOUNT OF U.S. TREASURY

CHECK NUMBER   ON (*Name of bank*)

CASH
$

DATE

PAYEE [3]

PER

TITLE

[1] When stated in foreign currency, insert name of currency.

[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.

[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

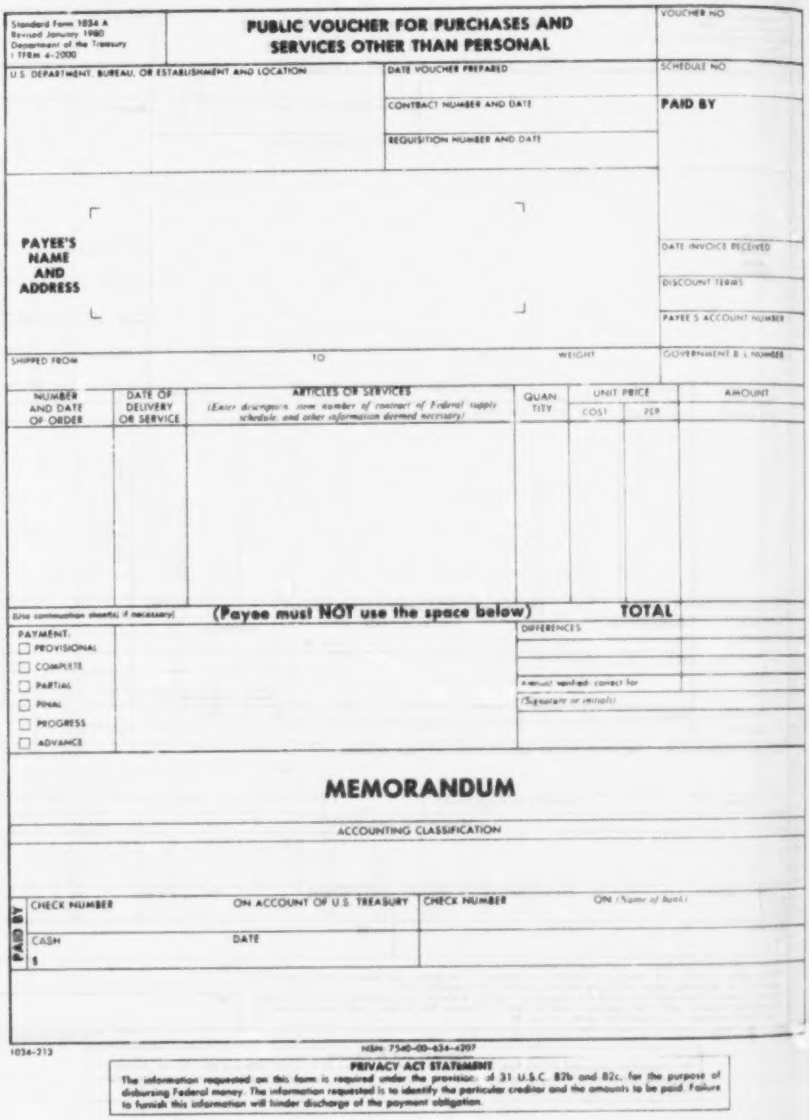
Previous edition usable

NSN 7540-00-634-4206

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

53.301-1034A Standard Form 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.



Standard Form 1034 A
Revised January 1980
Department of the Treasury
1 TFRM 4-2000

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

DATE VOUCHER PREPARED

SCHEDULE NO

CONTRACT NUMBER AND DATE

PAID BY

REQUISITION NUMBER AND DATE

PAYEE'S NAME AND ADDRESS

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM TO WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES *(Enter description, item number of contract of Federal supply schedule, and other information deemed necessary)*	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** **TOTAL**

PAYMENT:
☐ PROVISIONAL
☐ COMPLETE
☐ PARTIAL
☐ FINAL
☐ PROGRESS
☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION

PAID BY

CHECK NUMBER ON ACCOUNT OF U.S. TREASURY

CHECK NUMBER ON *(Name of bank)*

CASH
$

DATE

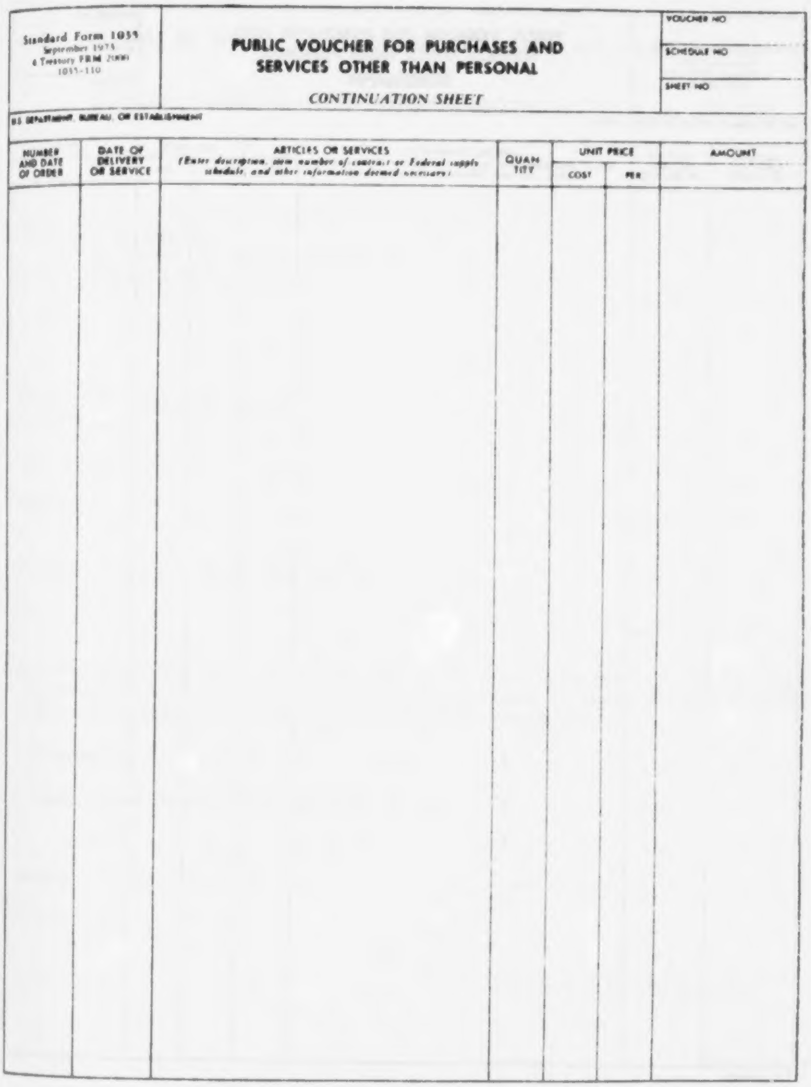
1034-213

NSN 7540-00-634-4207

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

53.301-1035 Standard Form 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.



Standard Form 1035
September 1973
Treasury FRM 2000
1035-110

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

CONTINUATION SHEET

VOUCHER NO

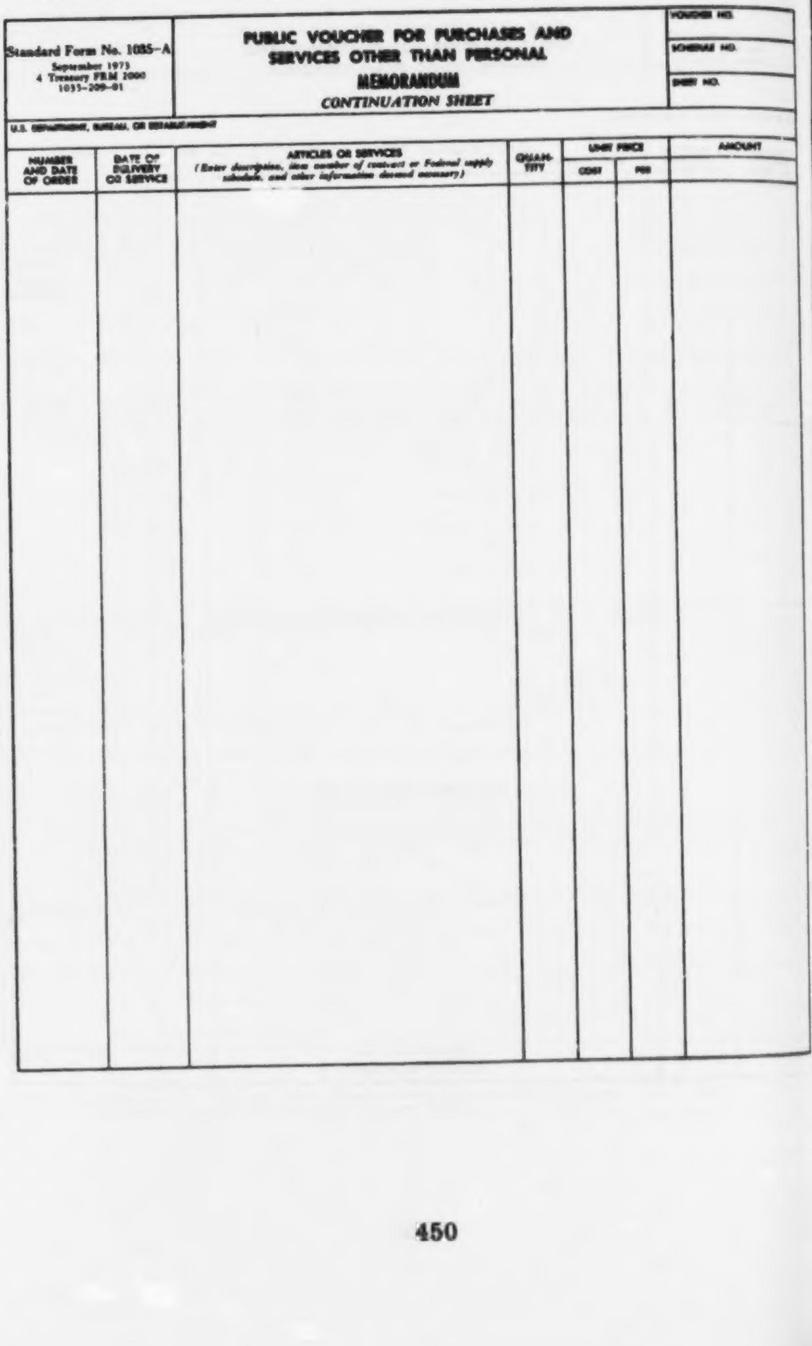
SCHEDULE NO

SHEET NO

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES *(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)*	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

53.301-1035A Standard Form 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.



Standard Form No. 1035–A
September 1973
4 Treasury FRM 2000
1035–209–01

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
MEMORANDUM
CONTINUATION SHEET

VOUCHER NO.
SCHEDULE NO.
SHEET NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES *(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)*	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

53.301-1093 Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.

SCHEDULE OF WITHHOLDINGS UNDER THE DAVIS-BACON ACT (40 U.S.C. 276a)

AND/OR

THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-333)

To The Claims Division
U.S. General Accounting Office
Washington, D.C. 20548

Contractor or subcontractor charged with violations ....

Prime contractor ....

Contract No. ...., ... (Date)

Report concerning irregularities transmitted to—

.............................., ... (Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are withholdings pursuant to the following laws:

Davis-Bacon Act .... $ ....

Contract Work Hours and Safety Standards Act .... $ ....

Total .... $ ....

Forwarded herewith is check No. ...., dated ....

for $ ....

....
(Disbursing officer or other administrative official)

Standard Form 1093
October 1971
4 GAO 46
1093-103

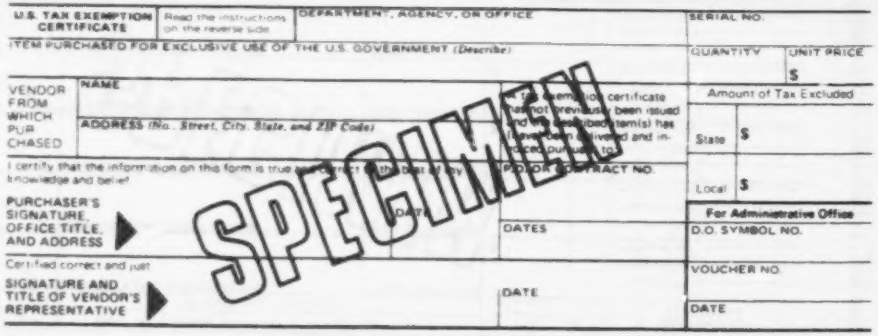
53.301-1094 Standard Form 1094, U.S. Tax Exemption Certificates.

Book No.

UNITED STATES TAX EXEMPTION CERTIFICATES

7540-00-634-4238 (1094-107) PREVIOUS EDITION USEABLE

These Are Accountable Forms



U.S. TAX EXEMPTION CERTIFICATE	Read the instructions on the reverse side	DEPARTMENT, AGENCY, OR OFFICE	SERIAL NO.	
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*			QUANTITY	UNIT PRICE $
VENDOR FROM WHICH PURCHASED	NAME ADDRESS *(No., Street, City, State, and ZIP Code)*	If tax exemption certificate has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:	Amount of Tax Excluded	
			State	$
I certify that the information on this form is true and correct to the best of my knowledge and belief PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▶	DATE	P.O. OR CONTRACT NO.	Local	$
		DATES	For Administrative Office D.O. SYMBOL NO.	
Certified correct and just SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▶		DATE	VOUCHER NO.	
			DATE	

SPECIMEN

STANDARD FORM 1094 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

INSTRUCTIONS

1 This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available

2 This form shall NOT be used for
(a) Purchases of quarters or subsistence made by employees in travel status
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax

3 If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information

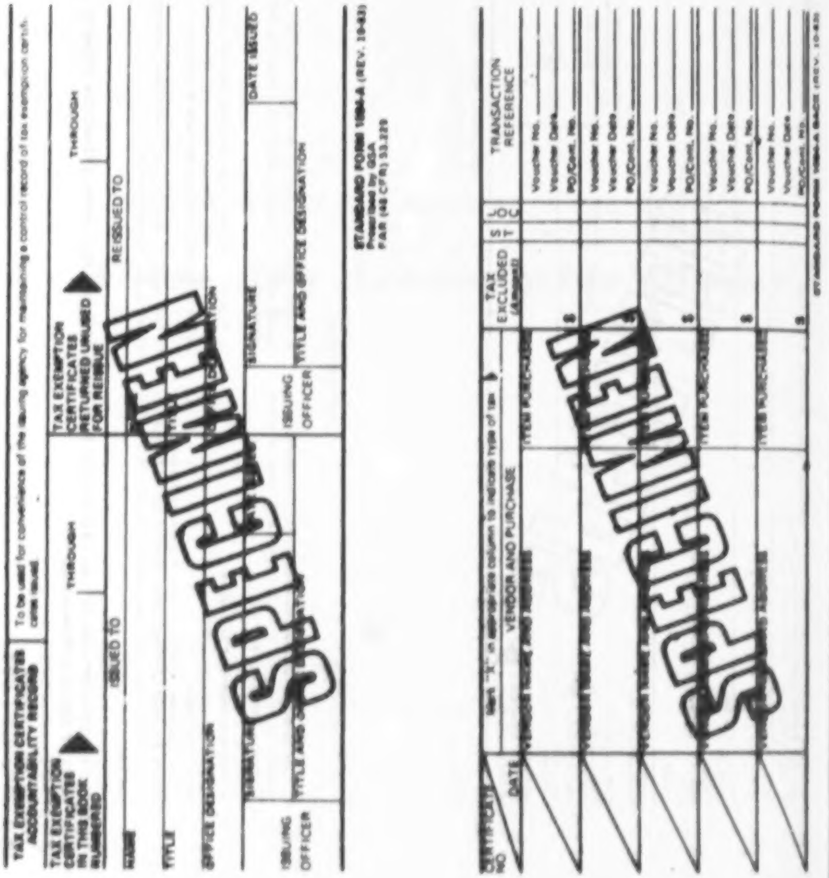
4 If both State and Local taxes are involved, use a separate form for each tax The certificate will be provided to the vendor when the prices exclude State or Local tax

5 The serial number of each certificate prepared will be shown on the payment voucher

THE FRAUDULENT USE OF THIS CERTIFICATE FOR THE PURPOSE OF OBTAINING EXEMPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 BACK (REV. 10-83)

53.301-1094-A Standard Form 1094-A, Tax Exemption Certificates Accountability Record.



SPECIMEN

TAX EXEMPTION CERTIFICATES ACCOUNTABILITY RECORD

To be used for convenience of the issuing agency for maintaining a control record of tax exemption certificates issued.

TAX EXEMPTION CERTIFICATES IN THIS BOOK NUMBERED ▶	THROUGH	TAX EXEMPTION CERTIFICATES RETURNED UNUSED FOR REISSUE ▶	THROUGH
ISSUED TO		REISSUED TO	
NAME		NAME	
TITLE		TITLE	
OFFICE DESIGNATION		OFFICE DESIGNATION	
ISSUING OFFICER	SIGNATURE DATE ISSUED TITLE AND OFFICE DESIGNATION	ISSUING OFFICER	SIGNATURE DATE ISSUED TITLE AND OFFICE DESIGNATION

STANDARD FORM 1094-A (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

SPECIMEN

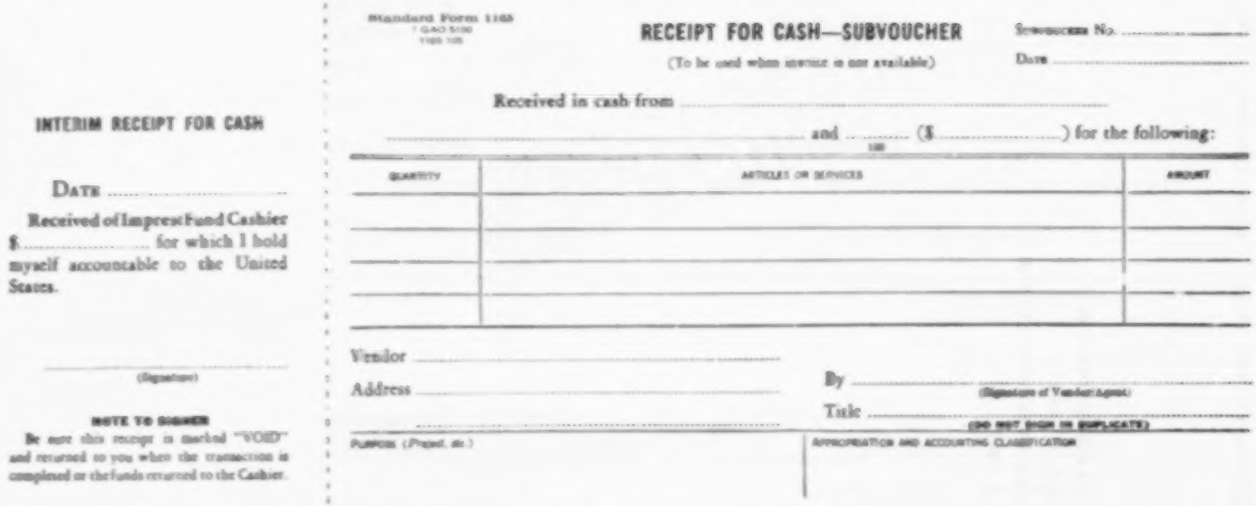
CERTIFICATE NO / DATE	Mark "X" in appropriate column to indicate type of tax ▶ VENDOR AND PURCHASE		TAX EXCLUDED (Amount)	ST	LOC	TRANSACTION REFERENCE
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____

STANDARD FORM 1094-A BACK (REV. 10-83)

In case this book of United States Tax Exemption Certificates is lost, finder will please put band or string around cover and mail to:

GENERAL SERVICES ADMINISTRATION
OFFICE OF PERSONAL PROPERTY
STANDARD FORMS MANAGEMENT (WYSI-B)
WASHINGTON, D. C. 20407

53.301-1165 Standard Form 1165, Receipt for Cash-Subvoucher.



INTERIM RECEIPT FOR CASH

DATE ....

Received of Imprest Fund Cashier $.......................... for which I hold myself accountable to the United States.

....
(Signature)

NOTE TO SIGNER

Be sure this receipt is marked "VOID" and returned to you when the transaction is completed or the funds returned to the Cashier.

Standard Form 1165
7 GAO 5100
1165-105

RECEIPT FOR CASH—SUBVOUCHER

(To be used when invoice is not available)

Subvoucher No. ....

Date ....

Received in cash from ....

.... and .... $\frac{}{100}$ ($..........................) for the following:

QUANTITY	ARTICLES OR SERVICES	AMOUNT

Vendor ....

Address ....

....

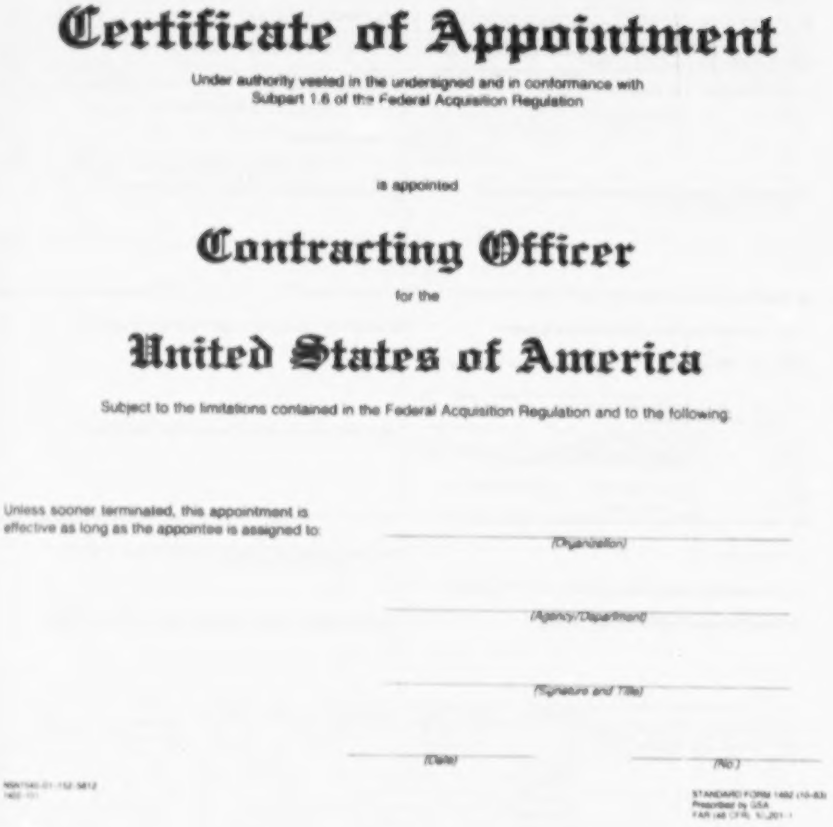
By ....
(Signature of Vendor/Agent)

Title ....
(DO NOT SIGN IN DUPLICATE)

PURPOSE (Project, etc.)

APPROPRIATION AND ACCOUNTING CLASSIFICATION

53.301-1402 Standard Form 1402, Certicate of Appointment.



Certificate of Appointment

Under authority vested in the undersigned and in conformance with
Subpart 1.6 of the Federal Acquisition Regulation

is appointed

Contracting Officer

for the

United States of America

Subject to the limitations contained in the Federal Acquisition Regulation and to the following:

Unless sooner terminated, this appointment is effective as long as the appointee is assigned to:

(Organization)

(Agency/Department)

(Signature and Title)

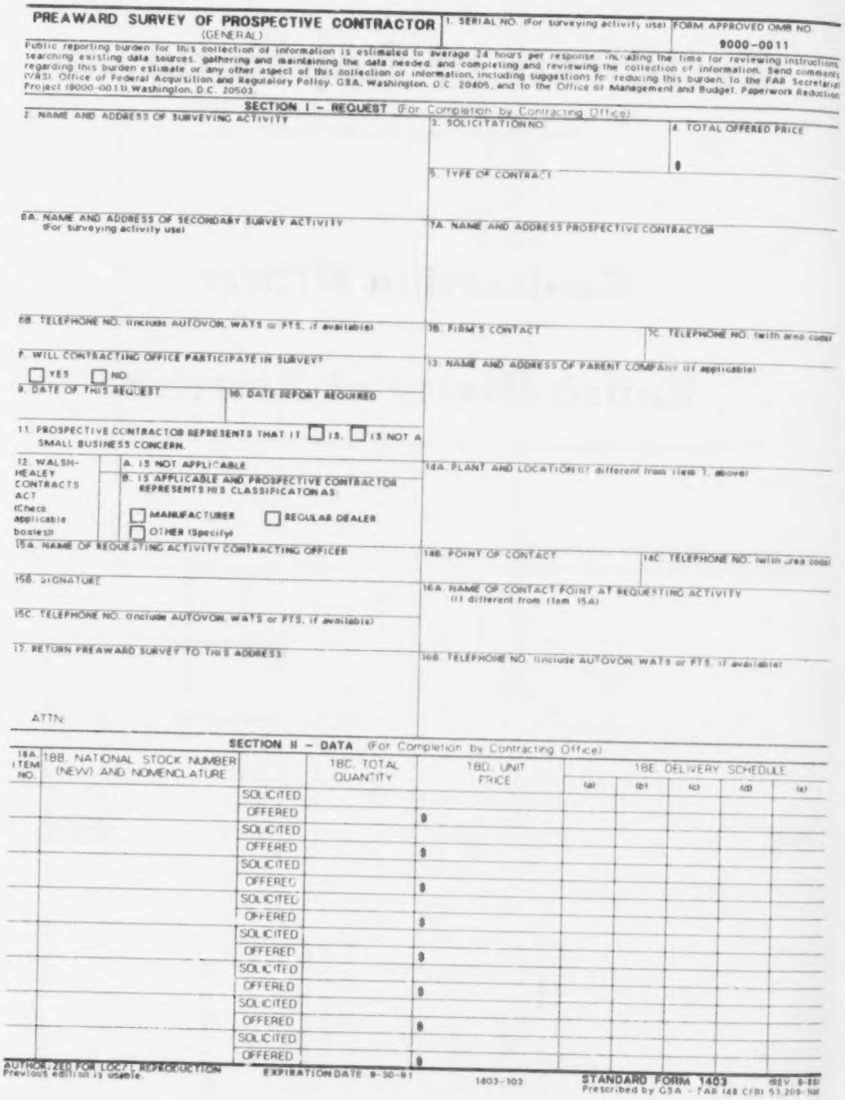
(Date)

(No.)

NSN 7540-01-152-5812
1402-101

STANDARD FORM 1402 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.201-1

53.301-1403 Preaward Survey of Prospective Contractor (General).



PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR
(GENERAL)

1. SERIAL NO. (For surveying activity use)

FORM APPROVED OMB NO.
9000-0011

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – REQUEST (For Completion by Contracting Office)

2. NAME AND ADDRESS OF SURVEYING ACTIVITY

3. SOLICITATION NO.

4. TOTAL OFFERED PRICE
$

5. TYPE OF CONTRACT

6A. NAME AND ADDRESS OF SECONDARY SURVEY ACTIVITY (For surveying activity use)

7A. NAME AND ADDRESS PROSPECTIVE CONTRACTOR

6B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

7B. FIRM'S CONTACT

7C. TELEPHONE NO. (with area code)

8. WILL CONTRACTING OFFICE PARTICIPATE IN SURVEY?
☐ YES ☐ NO

9. DATE OF THIS REQUEST

10. DATE REPORT REQUIRED

11. PROSPECTIVE CONTRACTOR REPRESENTS THAT IT ☐ IS, ☐ IS NOT A SMALL BUSINESS CONCERN.

12. WALSH-HEALEY CONTRACTS ACT (Check applicable box(es))
☐ A. IS NOT APPLICABLE
☐ B. IS APPLICABLE AND PROSPECTIVE CONTRACTOR REPRESENTS HIS CLASSIFICATON AS:
☐ MANUFACTURER ☐ REGULAR DEALER
☐ OTHER (Specify)

13. NAME AND ADDRESS OF PARENT COMPANY (if applicable)

14A. PLANT AND LOCATION (if different from item 7, above)

15A. NAME OF REQUESTING ACTIVITY CONTRACTING OFFICER

14B. POINT OF CONTACT

14C. TELEPHONE NO. (with area code)

15B. SIGNATURE

16A. NAME OF CONTACT POINT AT REQUESTING ACTIVITY (If different from item 15A)

15C. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

17. RETURN PREAWARD SURVEY TO THIS ADDRESS

ATTN:

16B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

SECTION II – DATA (For Completion by Contracting Office)

18A. ITEM NO.	18B. NATIONAL STOCK NUMBER (NEW) AND NOMENCLATURE		18C. TOTAL QUANTITY	18D. UNIT PRICE	18E. DELIVERY SCHEDULE				
					(a)	(b)	(c)	(d)	(e)
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					

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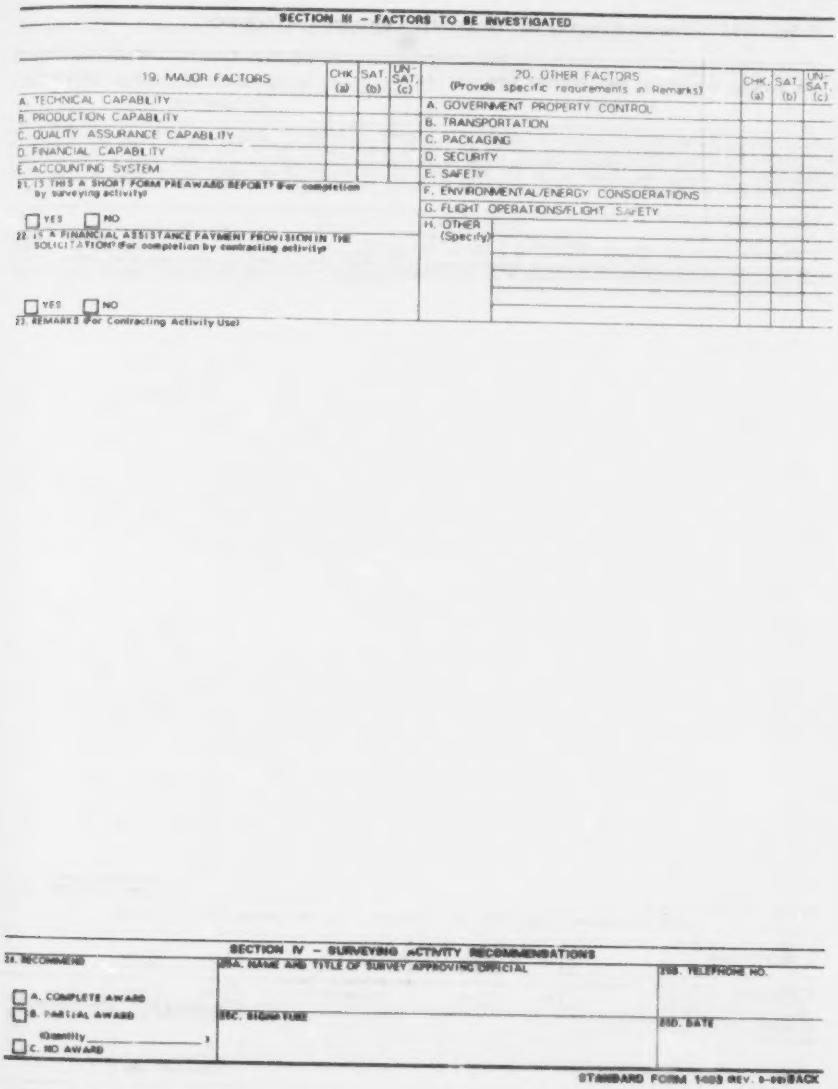
EXPIRATION DATE 9-30-91

1403-102

STANDARD FORM 1403 (REV. 9-88)
Prescribed by GSA - FAR (48 CFR) 53.209-1(a)



SECTION III – FACTORS TO BE INVESTIGATED

19. MAJOR FACTORS	CHK. (a)	SAT. (b)	UN-SAT. (c)
A. TECHNICAL CAPABILITY			
B. PRODUCTION CAPABILITY			
C. QUALITY ASSURANCE CAPABILITY			
D. FINANCIAL CAPABILITY			
E. ACCOUNTING SYSTEM			

20. OTHER FACTORS (Provide specific requirements in Remarks)		CHK. (a)	SAT. (b)	UN-SAT. (c)
A. GOVERNMENT PROPERTY CONTROL				
B. TRANSPORTATION				
C. PACKAGING				
D. SECURITY				
E. SAFETY				
F. ENVIRONMENTAL/ENERGY CONSIDERATIONS				
G. FLIGHT OPERATIONS/FLIGHT SAFETY				
H. OTHER (Specify)				

21. IS THIS A SHORT FORM PREAWARD REPORT? (For completion by surveying activity)

☐ YES ☐ NO

22. IS A FINANCIAL ASSISTANCE PAYMENT PROVISION IN THE SOLICITATION? (For completion by contracting activity)

☐ YES ☐ NO

23. REMARKS (For Contracting Activity Use)

SECTION IV – SURVEYING ACTIVITY RECOMMENDATIONS

24. RECOMMEND

☐ A. COMPLETE AWARD
☐ B. PARTIAL AWARD
(Quantity ____________)
☐ C. NO AWARD

25A. NAME AND TITLE OF SURVEY APPROVING OFFICIAL

25B. TELEPHONE NO.

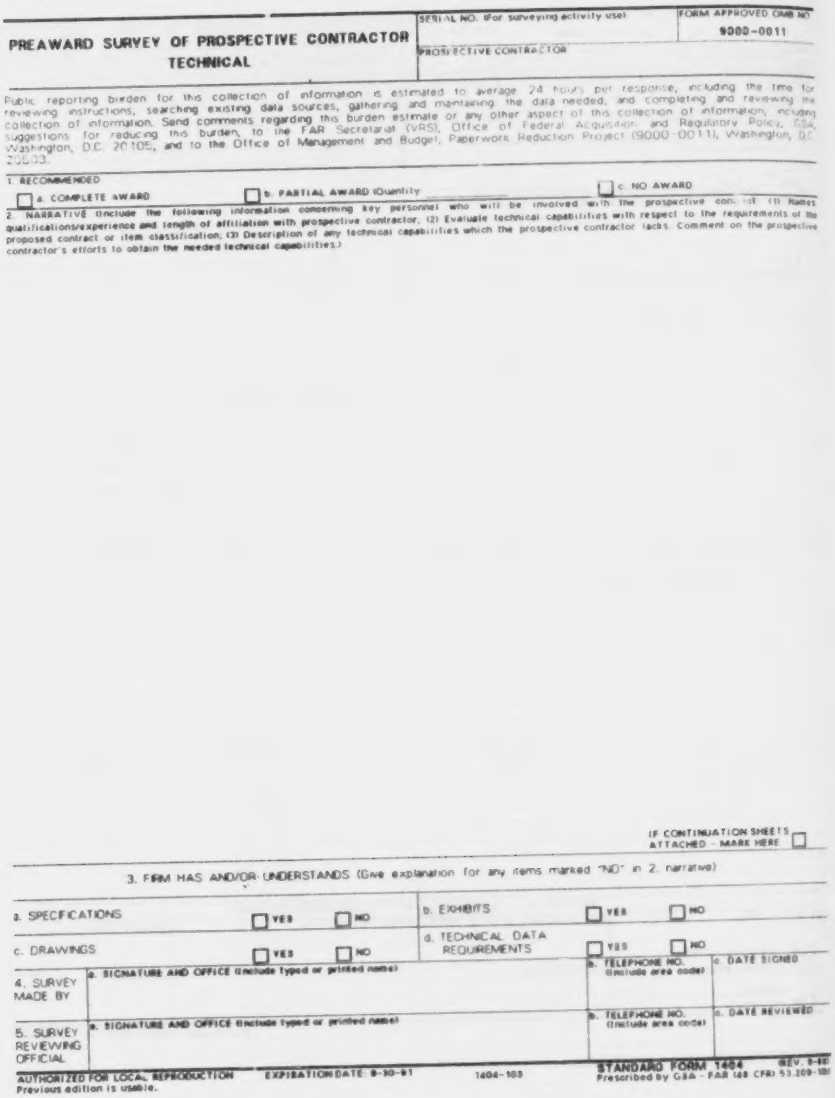
25C. SIGNATURE

25D. DATE

STANDARD FORM 1403 (REV. 9-88) BACK

[55 FR 25553, June 21, 1990]

53.301-1404 Preaward Survey of Prospective Contractor—Technical.



PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR TECHNICAL	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, DC 20503.

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity ______) ☐ c. NO AWARD

2. NARRATIVE (Include the following information concerning key personnel who will be involved with the prospective contract: (1) Names qualifications/experience and length of affiliation with prospective contractor; (2) Evaluate technical capabilities with respect to the requirements of the proposed contract or item classification; (3) Description of any technical capabilities which the prospective contractor lacks. Comment on the prospective contractor's efforts to obtain the needed technical capabilities.)

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

3. FIRM HAS AND/OR UNDERSTANDS (Give explanation for any items marked "NO" in 2. narrative)

a. SPECIFICATIONS	☐ YES	☐ NO	b. EXHIBITS	☐ YES	☐ NO
c. DRAWINGS	☐ YES	☐ NO	d. TECHNICAL DATA REQUIREMENTS	☐ YES	☐ NO

4. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE: 9-30-91 1404-103 STANDARD FORM 1404 (REV. 9-88)
Previous edition is usable. Prescribed by GSA - FAR (48 CFR) 53.209-1

[55 FR 25555, June 21, 1990]

53.301-1405 Preaward Survey of Prospective Contractor—Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR PRODUCTION	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMENDED

☐ COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: ________ ☐ c. NO AWARD

2. NARRATIVE (Cite those sections of this report which substantiate the recommendations. List any other backup information in this space or on attached sheet if necessary. Identify any formal systems reviews and state results.)

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

3. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable.
EXPIRATION DATE: 9-30-91
1405-103
STANDARD FORM 1405 (REV. 9-88)
Prescribed by GSA - FAR (48 CFR) 53.209-1(c)

SECTION II – PLANT FACILITIES

1. SIZE OF TRACT

2. SQUARE FEET UNDER ROOF

3. NO. OF BUILDINGS

4. DESCRIPTION AND TYPE OF BUILDING(S)

☐ OWNED

☐ LEASED (Give expiration date)

5. SPACE				
	TYPE	SQUARE FEET	ADEQUATE	INADEQUATE
MANUFACTURING	a. TOTAL MANUFACTURING SPACE			
	b. SPACE AVAILABLE FOR OFFERED ITEM			
STORAGE	c. TOTAL STORAGE SPACE			
	d. FOR INSPECTION LOTS			
	e. FOR SHIPPING QUANTITIES			
	f. SPACE AVAILABLE FOR OFFERED ITEM			
	g. AMOUNT OF STORAGE THAT CAN BE CONVERTED FOR MANUFACTURING, IF REQUIRED			

6. MISCELLANEOUS PLANT OBSERVATIONS			
	(Explain any items marked "NO" on an attached sheet.)	YES	NO
	a. GOOD HOUSEKEEPING MAINTAINED		
	b. POWER AND FUEL SUPPLY ADEQUATE TO MEET PRODUCTION REQUIREMENTS		
	c. ALTERNATE POWER AND FUEL SOURCE AVAILABLE		
	d. ADEQUATE MATERIAL HANDLING EQUIPMENT AVAILABLE		
	e. TRANSPORTATION FACILITIES AVAILABLE FOR SHIPPING PRODUCT		
OTHER (Specify)	f.		
	g.		
	h.		

SECTION III – PRODUCTION EQUIPMENT

	LIST MAJOR EQUIPMENT REQUIRED (Include GFP and annotate it as such) (a)	QUANTITY REQUIRED FOR PROPOSED CONTRACT (b)	TOTAL QTY. REQD. DURING LIFE OF PROPOSED CONTRACT (c)	QUANTITY ON HAND (d)	CONDITION (e)			QUANTITY SHORT* (Col. (c) minus (d)) (f)	SOURCE, IF NOT ON HAND (g)	VERIFIED DELIVERY DATE (h)
					G	F	P			
1. MANUFACTURING										
2. SPECIAL TOOLING										
3. SPECIAL TEST										

* Coordinate shortage information for financial implications.

STANDARD FORM 1405 (REV. 9-88) PAGE 2

SECTION IV – MATERIALS, PURCHASED PARTS AND SUBCONTRACTS

1. PARTS/MATERIALS/SUBCONTRACTS WITH LONGEST LEAD TIME OR CRUCIAL ITEMS

DESCRIPTION (a)	SOURCE (b)	VERIFIED DELIVERY DATE TO MEET PROD. (c)

2. DESCRIBE THE MATERIAL CONTROL SYSTEM, INDICATING WHETHER IT IS CURRENTLY OPERATIONAL, AND EVALUATE ITS ABILITY TO MEET THE NEEDS OF THE PROPOSED ACQUISITION.

SECTION V – PERSONNEL

1. NUMBER AND SOURCE OF EMPLOYEES

TYPE OF EMPLOYEES	NO. ON BOARD	ADD. NO. REQUIRED	AVAIL.		SOURCE
			YES	NO	
a. Skilled Production					
b. Unskilled Production					
c. Engineering					
d. Administrative					
e. TOT. (Lines a thru d)					

2. SHIFTS ON WHICH WORK IS TO BE PERFORMED

☐ FIRST ☐ SECOND ☐ THIRD

3. UNION AFFILIATION

AGREEMENT EXPIRATION DATE ▶

4. RELATIONSHIP WITH LABOR INDICATES PROBLEMS AFFECTING TIMELY PERFORMANCE OF PROPOSED CONTRACT (If "Yes," explain on attached sheet)

☐ YES ☐ NO

SECTION VI – DELIVERY PERFORMANCE RECORD

SECTION VII – RELATED PREVIOUS PRODUCTION (Government)

PAST YEAR PRODUCTION		GOVERNMENT CONTRACT NUMBER 1/	PERFORMANCE		QUANTITY	DOLLAR VALUE ($000)
ITEM NOMENCLATURE (a)	NATIONAL STOCK NO. (NSN) (b)	(c)	ON SCHED (d)	DELIN-QUENT (e)	(f)	(g)

1/ Identify identical items by an asterisk (*) after the Government contract number.

SECTION VIII – CURRENT PRODUCTION

(Government and civilian concurrent production schedule using same equipment and/or personnel as offered item.)

ITEM(S) (include Government Contract No., if applicable. Identify unsatisfactory performance with asterisk (*).)		MONTHLY SCHEDULE OF CONCURRENT DELIVERIES (Quantity)										
		1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	BAL
1. BEING PRODUCED												
2. PENDING AWARD												

SECTION IX – ORGANIZATION AND MANAGEMENT DATA

Provide the following information in SECTION I NARRATIVE:

1. Describe the relationship between management, production, and inspection. Attach an organizational chart, if available.

2. Describe the prospective contractor's production control system. State whether or not it is operational.

3. Evaluate the prospective contractor's production control system in terms of (a) historical effectiveness, (b) the proposed contract, and (c) total production during performance of the proposed contract.

4. Comment on or evaluate other areas unique to this survey (include all special requests by the contracting office and any other information pertinent to the proposed contract or item classification).

STANDARD FORM 1405 (REV. 9-88) PAGE 4

[55 FR 25556, June 21, 1990]

53.301-1406 Preaward Survey of Prospective Contractor—Quality Assurance.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMEND: ☐ AWARD ☐ NO AWARD (Provide full substantiation for recommendation in 4. NARRATIVE)

2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE, IS RECOMMENDED ☐ YES ☐ NO

3. AN ON-SITE SURVEY WAS PERFORMED. ☐ YES ☐ NO

4. NARRATIVE

IF CONTINUATION SHEETS - MARK HERE ☐

5. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
6. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE: 9-30-91
Previous edition is usable.

1406-103

STANDARD FORM 1406 (REV. 9-88)
Prescribed by GSA - FAR (48 CFR) 53.209-1(d)

SECTION II – COMPANY AND SOLICITATION DATA

1. QUALITY ASSURANCE ORGANIZATION (Describe briefly and attach organization chart.)

2. QUALITY ASSURANCE OFFICIALS CONTACTED (Names, titles, and years of quality assurance experience)

3. QUALITY, RELIABILITY, MAINTAINABILITY REQUIREMENTS WHICH APPLY ◀

☐	MIL-I-45208	☐	MIL-STD-45662	☐ OTHER (Specify)	
☐	MIL-I-45607	☐	MIL-STD-785		
☐	MIL-Q-9858	☐	MIL-STD-470	☐	MIL-S-52779

4. ☐ IDENTICAL OR ☐ SIMILAR ITEMS HAVE BEEN ☐ PRODUCED ☐ SERVICED BY PROSPECTIVE CONTRACTOR

(If similar items, identify:)

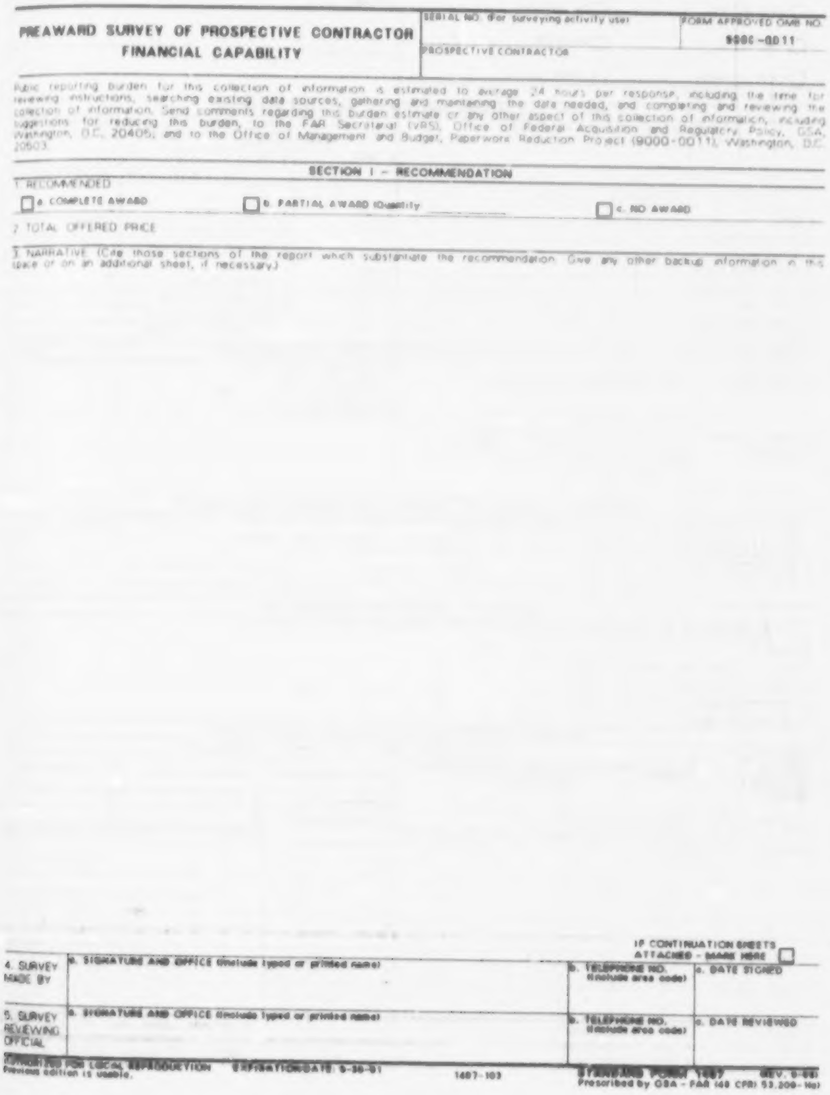
SECTION III – EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. AS PERTAINS TO THE CONTRACT, THESE ITEMS ARE UNDERSTOOD BY THE CONTRACTOR	a. Exhibits, technical data, drawings, specifications, and approval requirements.		
	b. Preservation, packaging, packing, and marking requirements.		
	c. OTHER (Specify)		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used or reconditioned material and former Government surplus material will be furnished by the prospective contractor. (If Yes, explain in Section I NARRATIVE)			
4. Prospective contractor will require unusual assistance from the Government.			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract?			
6. Quality control, inspection, and test personnel. NUMBER SKILLED	NUMBER SEMI-SKILLED	▨	▨
7. Inspection to production personnel ratio.	RATIO	▨	▨
The following are available and adequate. (If not applicable, show "N/A" in "Yes" column.)		▨	▨
8. Inspection and test equipment, gauges, and instruments for first article and production (including solicitation specified equipment).			
9. Calibration/metrology program.			
10. Written procedures and instructions for inspections, tests, process controls, and other requirements; conformance thereto; in conjunction with other planning control functions.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. Quality assurance/control organizational structure.			
13. System for determining inspection, test, and measurement requirements.			
14. Controls for selecting qualified suppliers and assuring the quality of purchased materials.			
15. Material control: identification, segregation, maintenance, preservation, and correction of defects.			
16. Government furnished property controls.			
17. In-process inspection controls.			
18. System for timely identification and correction of deficiencies to prevent recurrence.			
19. Preservation, packaging, packing, marking controls.			
20. Quality control records (such as: inspection, test, corrective actions, calibration, etc.)			
21. Controls for investigation of customer complaints and correction of deficiencies.			
22. Reliability and/or maintainability program.			
23. Computer software (deliverable and/or non-deliverable) quality assurance program.			

STANDARD FORM 1406 REV. 9-88 BACK

[55 FR 25560, June 21, 1990]

53.301-1407 Preaward Survey of Prospective Contractor—Financial Capability.



PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR FINANCIAL CAPABILITY	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity ________) ☐ c. NO AWARD

2. TOTAL OFFERED PRICE

3. NARRATIVE (Cite those sections of the report which substantiate the recommendation. Give any other backup information in this space or on an additional sheet, if necessary.)

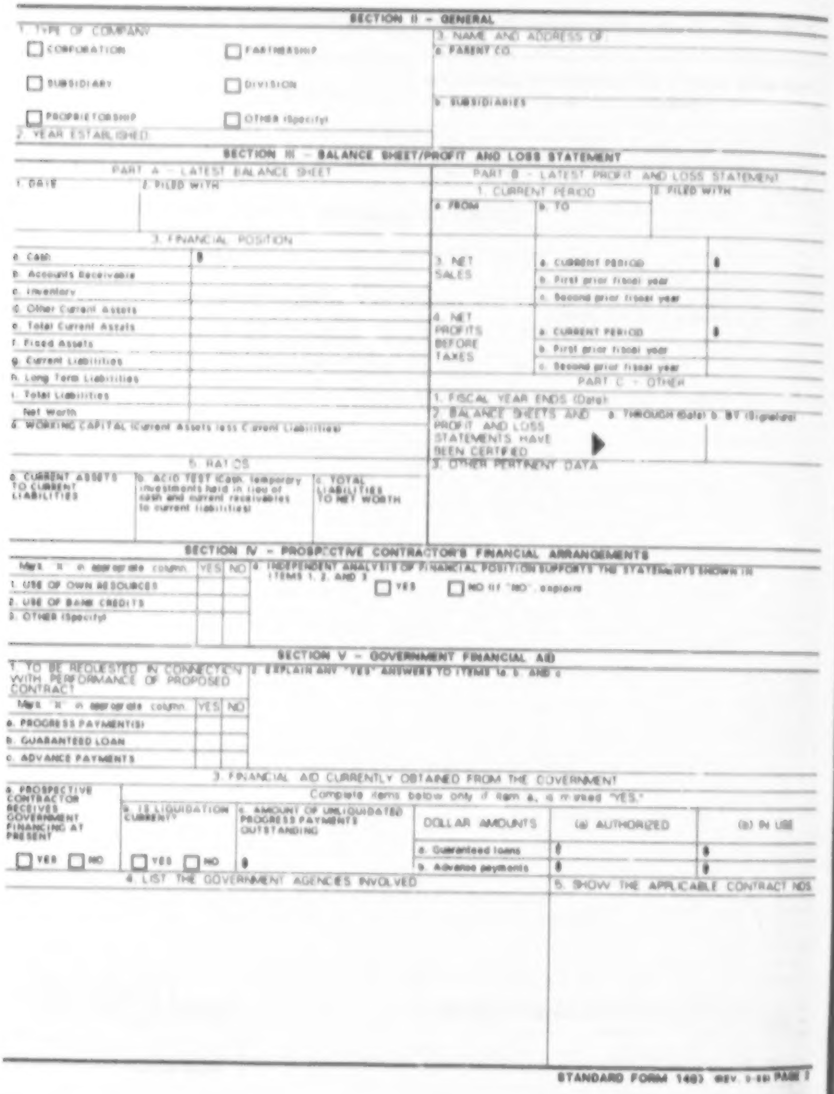
IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

4. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE: 5-30-91
Previous edition is usable.

1407-103

STANDARD FORM 1407 (REV. 9-88)
Prescribed by GSA - FAR (48 CFR) 53.209-1(a)



SECTION II – GENERAL

1. TYPE OF COMPANY

☐ CORPORATION ☐ PARTNERSHIP

☐ SUBSIDIARY ☐ DIVISION

☐ PROPRIETORSHIP ☐ OTHER (Specify)

2. YEAR ESTABLISHED

3. NAME AND ADDRESS OF:

a. PARENT CO.

b. SUBSIDIARIES

SECTION III – BALANCE SHEET/PROFIT AND LOSS STATEMENT

PART A – LATEST BALANCE SHEET

1. DATE

2. FILED WITH

3. FINANCIAL POSITION

a. Cash	$
b. Accounts Receivable	
c. Inventory	
d. Other Current Assets	
e. Total Current Assets	
f. Fixed Assets	
g. Current Liabilities	
h. Long Term Liabilities	
i. Total Liabilities	
Net Worth	

4. WORKING CAPITAL (Current Assets less Current Liabilities)

5. RATIOS

a. CURRENT ASSETS TO CURRENT LIABILITIES	b. ACID TEST (Cash, temporary investments held in lieu of cash and current receivables to current liabilities)	c. TOTAL LIABILITIES TO NET WORTH

PART B – LATEST PROFIT AND LOSS STATEMENT

1. CURRENT PERIOD

a. FROM

b. TO

2. FILED WITH

3. NET SALES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	
4. NET PROFITS BEFORE TAXES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	

PART C – OTHER

1. FISCAL YEAR ENDS (Date)

2. BALANCE SHEETS AND PROFIT AND LOSS STATEMENTS HAVE BEEN CERTIFIED ▶ a. THROUGH (Date) b. BY (Signature)

3. OTHER PERTINENT DATA

SECTION IV – PROSPECTIVE CONTRACTOR'S FINANCIAL ARRANGEMENTS

Mark "X" in appropriate column.	YES	NO
1. USE OF OWN RESOURCES		
2. USE OF BANK CREDITS		
3. OTHER (Specify)		

4. INDEPENDENT ANALYSIS OF FINANCIAL POSITION SUPPORTS THE STATEMENTS SHOWN IN ITEMS 1, 2, AND 3

☐ YES ☐ NO (If "NO", explain)

SECTION V – GOVERNMENT FINANCIAL AID

1. TO BE REQUESTED IN CONNECTION WITH PERFORMANCE OF PROPOSED CONTRACT

Mark "X" in appropriate column.	YES	NO
a. PROGRESS PAYMENT(S)		
b. GUARANTEED LOAN		
c. ADVANCE PAYMENTS		

2. EXPLAIN ANY "YES" ANSWERS TO ITEMS 1a, b, AND c

3. FINANCIAL AID CURRENTLY OBTAINED FROM THE GOVERNMENT

a. PROSPECTIVE CONTRACTOR RECEIVES GOVERNMENT FINANCING AT PRESENT

☐ YES ☐ NO

Complete items below only if item a. is marked "YES."

b. IS LIQUIDATION CURRENT?

☐ YES ☐ NO

c. AMOUNT OF UNLIQUIDATED PROGRESS PAYMENTS OUTSTANDING

$

DOLLAR AMOUNTS	(a) AUTHORIZED	(b) IN USE
a. Guaranteed loans	$	$
b. Advance payments	$	$

4. LIST THE GOVERNMENT AGENCIES INVOLVED

5. SHOW THE APPLICABLE CONTRACT NOS.

STANDARD FORM 1407 (REV. [illegible]) PAGE 2

SECTION VI - BUSINESS AND FINANCIAL REPUTATION

1. COMMENTS OF PROSPECTIVE CONTRACTOR'S BANK

2. COMMENTS OF TRADE CREDITORS

3. COMMENTS AND REPORTS OF COMMERCIAL FINANCIAL SERVICES AND CREDIT ORGANIZATIONS (Such as, Dun & Bradstreet, Standard and Poor, etc.)

4. MOST RECENT CREDIT RATING ▶ a. DATE | b. BY

5. DOES PRICE APPEAR UNREALISTICALLY LOW? ☐ YES ☐ NO (If YES, explain in Section I NARRATIVE)

6. DESCRIBE ANY OUTSTANDING LIENS OR JUDGEMENTS

SECTION VII - SALES ($000's) FOR NEXT SIX QUARTERS

CATEGORY	1	2	3	4	5	6	TOTAL
1. CURRENT CONTRACT SALES (Backlog)	$	$	$	$	$	$	$
A. GOVERNMENT (Prime & Subcontractor)							
B. COMMERCIAL							
2. ANTICIPATED ADDITIONAL SALES							
A. GOVERNMENT (Prime and Subcontractor)							
B. COMMERCIAL							
3. TOTALS							

STANDARD FORM 1407 (REV. 9-88) PAGE 3

[55 FR 25562, June 21, 1990]

53.301-1408 Preaward Survey of Prospective Contractor—Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR ACCOUNTING SYSTEM	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, DC 20503.

SECTION I – RECOMMENDATION

1. PROSPECTIVE CONTRACTOR'S ACCOUNTING SYSTEM IS ACCEPTABLE FOR AWARD OF PROSPECTIVE CONTRACT

☐ YES ☐ NO (Explain in 2. NARRATIVE)

☐ YES, WITH A RECOMMENDATION THAT A FOLLOW ON ACCOUNTING SYSTEM REVIEW BE PERFORMED AFTER CONTRACT AWARD (Explain in 2. NARRATIVE)

2. NARRATIVE (Clarification of deficiencies, and other pertinent comments. If additional space is required, continue on plain sheets of paper.)

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

3. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable.
EXPIRATION DATE 9-30-91
1408-103
STANDARD FORM 1408 REV. 9-8
Prescribed by GSA - FAR (48 CFR) 53.209-1

SECTION II - EVALUATION CHECKLIST

MARK "X" IN THE APPROPRIATE COLUMN (Explain any deficiencies in SECTION I NARRATIVE)	YES	NO	NOT APPLI-CABLE
1. EXCEPT AS STATED IN SECTION I NARRATIVE, IS THE ACCOUNTING SYSTEM IN ACCORD WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLICABLE IN THE CIRCUMSTANCES?			
2. ACCOUNTING SYSTEM PROVIDES FOR:			
a. Proper segregation of direct costs from indirect costs.			
b. Identification and accumulation of direct costs by contract.			
c. A logical and consistent method for the allocation of indirect costs to intermediate and final cost objectives. (A contract is a final cost objective.)			
d. Accumulation of costs under general ledger control.			
e. A timekeeping system that identifies employees' labor by intermediate or final cost objectives.			
f. A labor distribution system that charges direct and indirect labor to the appropriate cost objectives.			
g. Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account.			
h. Exclusion from costs charged to government contracts of amounts which are not allowable in terms of FAR 31, Contract Cost Principles and Procedures, or other contract provisions.			
i. Identification of costs by contract line item and by units (as if each unit or line item were a separate contract) if required by the proposed contract.			
j. Segregation of preproduction costs from production costs.			
3. ACCOUNTING SYSTEM PROVIDES FINANCIAL INFORMATION:			
a. Required by contract clauses concerning limitation of cost (FAR 52.232-20 and 21) or limitation on payments (FAR 52.216-16).			
b. Required to support requests for progress payments.			
4. IS THE ACCOUNTING SYSTEM DESIGNED, AND ARE THE RECORDS MAINTAINED IN SUCH A MANNER THAT ADEQUATE, RELIABLE DATA ARE DEVELOPED FOR USE IN PRICING FOLLOW-ON ACQUISITIONS?			
5. IS THE ACCOUNTING SYSTEM CURRENTLY IN FULL OPERATION? (If not, describe in Section I Narrative which portions are (1) in operation, (2) set up, but not yet in operation, (3) anticipated, or (4) nonexistent.)			

STANDARD FORM 1408 (REV. 9-88) BACK

[55 FR 25565, June 21, 1990]

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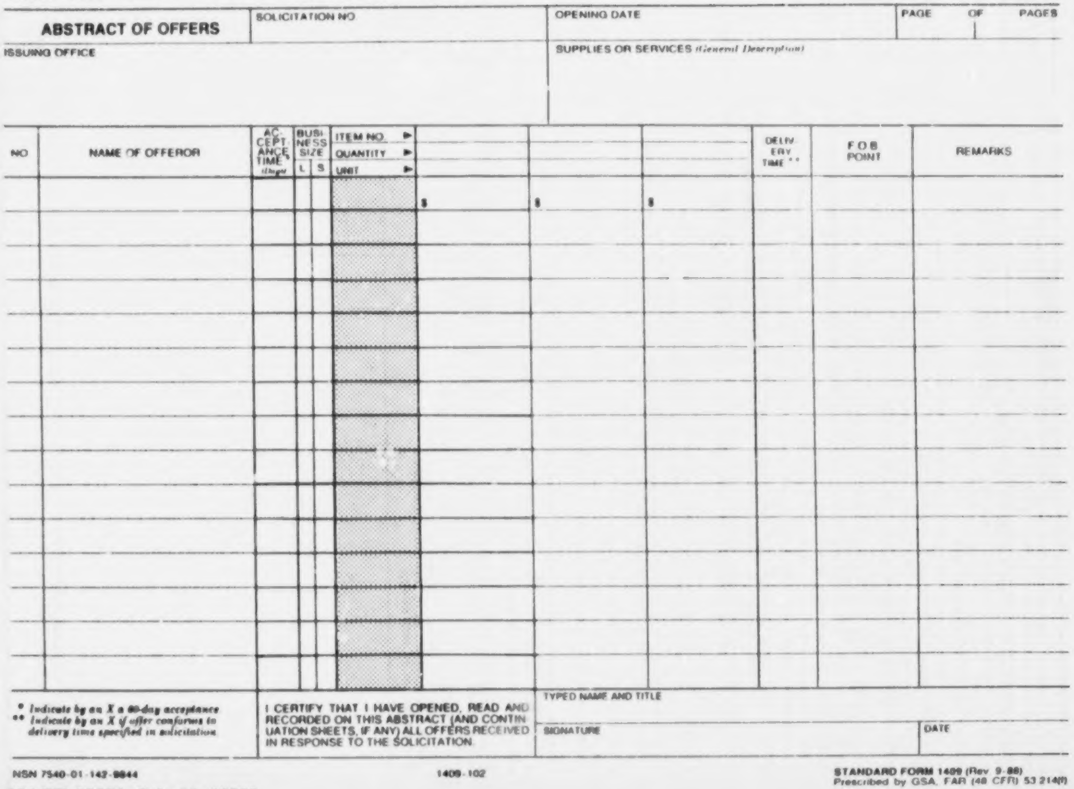
53.301-1409 Standard Form 1409, Abstract of Offers.



ABSTRACT OF OFFERS	SOLICITATION NO	OPENING DATE	PAGE OF PAGES
ISSUING OFFICE		SUPPLIES OR SERVICES *(General Description)*	

NO	NAME OF OFFEROR	ACCEPTANCE TIME* *(Days)*	BUSINESS SIZE L	BUSINESS SIZE S	ITEM NO. ► QUANTITY ► UNIT ►				DELIVERY TIME**	F.O.B. POINT	REMARKS
						$	$	$			

* *Indicate by an X a 60-day acceptance*
** *Indicate by an X if offer conforms to delivery time specified in solicitation.*

I CERTIFY THAT I HAVE OPENED, READ AND RECORDED ON THIS ABSTRACT (AND CONTINUATION SHEETS, IF ANY) ALL OFFERS RECEIVED IN RESPONSE TO THE SOLICITATION.

TYPED NAME AND TITLE

SIGNATURE

DATE

NSN 7540-01-142-9844

1409-102

STANDARD FORM 1409 (Rev. 9-88)
Prescribed by GSA, FAR (48 CFR) 53.214(f)

[54 FR 29284, July 11, 1989]

53.301-1410 Standard Form 1410, Abstract of Offers—Continuation.

ABSTRACT OF OFFERS – CONTINUATION

PAGE OF PAGES

NO									
	ITEM NO ▶								
	QUANTITY ▶								
	UNIT ▶								
		$	$	$	$	$	$	$	$

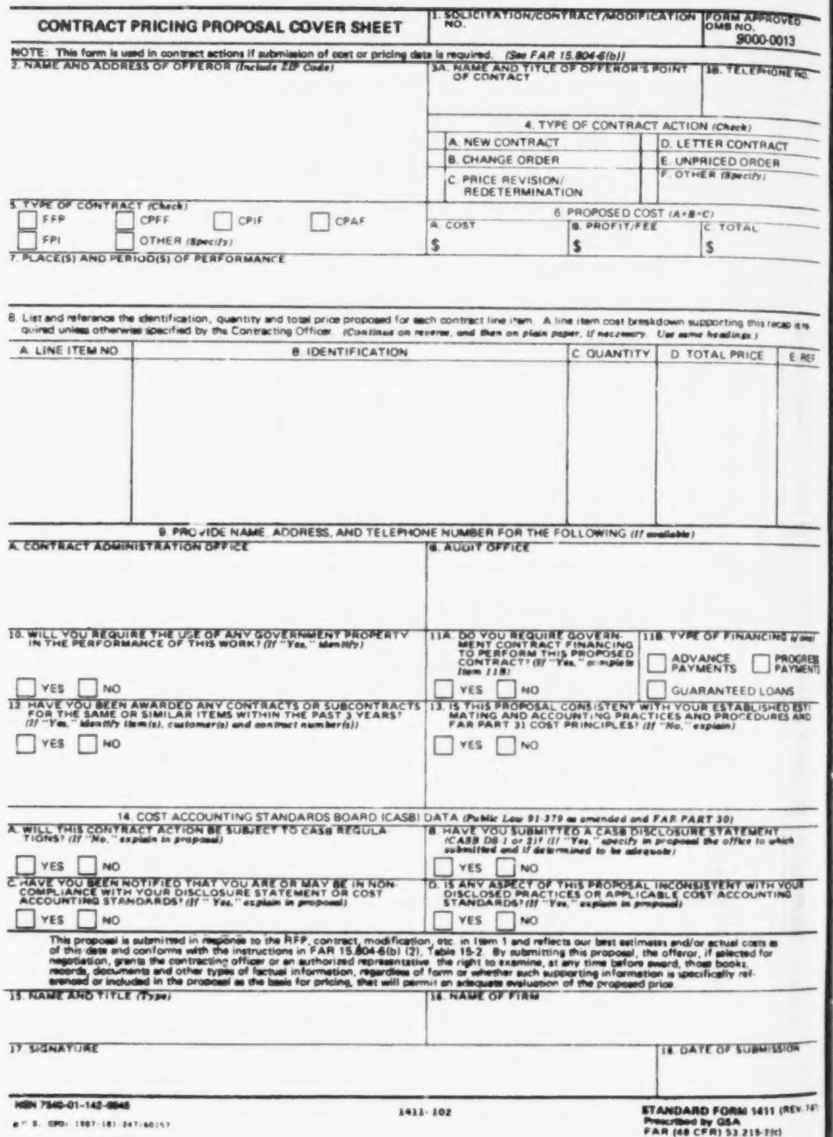
NSN 7540-01-280-5601

1410-101

STANDARD FORM 1410 (Rev. 9-88)
Prescribed by GSA, FAR (48 CFR) 53.214(f)

[54 FR 29286, July 11, 1989]

53.301-1411 Contract Pricing Proposal Cover Sheet.



CONTRACT PRICING PROPOSAL COVER SHEET

1. SOLICITATION/CONTRACT/MODIFICATION NO.

FORM APPROVED OMB NO. 9000-0013

NOTE: This form is used in contract actions if submission of cost or pricing data is required. *(See FAR 15.804-6(b))*

2. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*

3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT

3B. TELEPHONE NO.

4. TYPE OF CONTRACT ACTION *(Check)*

☐ A. NEW CONTRACT
☐ B. CHANGE ORDER
☐ C. PRICE REVISION/ REDETERMINATION
☐ D. LETTER CONTRACT
☐ E. UNPRICED ORDER
☐ F. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PROPOSED COST *(A+B=C)*

A. COST	B. PROFIT/FEE	C. TOTAL
$	$	$

7. PLACE(S) AND PERIOD(S) OF PERFORMANCE

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. *(Continue on reverse, and then on plain paper, if necessary. Use same headings.)*

A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. REF

9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING *(If available)*

A. CONTRACT ADMINISTRATION OFFICE

B. AUDIT OFFICE

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? *(If "Yes," identify)*

☐ YES ☐ NO

11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? *(If "Yes," complete Item 11B)*

☐ YES ☐ NO

11B. TYPE OF FINANCING

☐ ADVANCE PAYMENTS ☐ PROGRES PAYMENTS
☐ GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? *(If "Yes," identify item(s), customer(s) and contract number(s))*

☐ YES ☐ NO

13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31 COST PRINCIPLES? *(If "No," explain)*

☐ YES ☐ NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA *(Public Law 91-379 as amended and FAR PART 30)*

A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? *(If "No," explain in proposal)*

☐ YES ☐ NO

B. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT *(CASB DS-1 or 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)*

☐ YES ☐ NO

C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*

☐ YES ☐ NO

D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*

☐ YES ☐ NO

This proposal is submitted in response to the RFP, contract, modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b) (2), Table 15-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine, at any time before award, those books, records, documents and other types of factual information, regardless of form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

15. NAME AND TITLE *(Type)*

16. NAME OF FIRM

17. SIGNATURE

18. DATE OF SUBMISSION

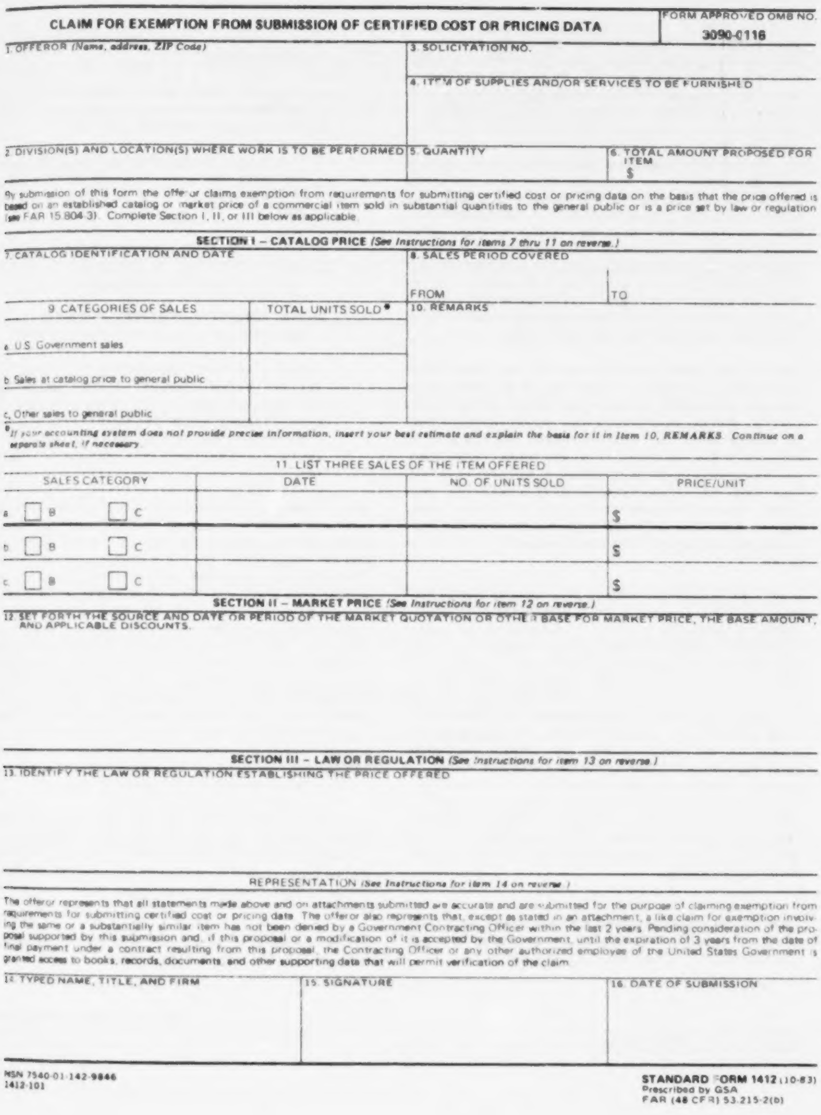
NSN 7540-01-142-9845
☆ U.S. GPO: 1987-181-247/60157

1411-102

STANDARD FORM 1411 (REV.
Prescribed by GSA
FAR (48 CFR) 53.215-2(c)

[53 FR 17861, May 18, 1988]

53.301-1412 Standard Form 1412, Claim for Exemption from Submission of Certified Cost of Pricing Data.



CLAIM FOR EXEMPTION FROM SUBMISSION OF CERTIFIED COST OR PRICING DATA	FORM APPROVED OMB NO. 3090-0116

1. OFFEROR *(Name, address, ZIP Code)*	3. SOLICITATION NO. 4. ITEM OF SUPPLIES AND/OR SERVICES TO BE FURNISHED	
2. DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	5. QUANTITY	6. TOTAL AMOUNT PROPOSED FOR ITEM $

By submission of this form the offeror claims exemption from requirements for submitting certified cost or pricing data on the basis that the price offered is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public or is a price set by law or regulation (see FAR 15.804-3). Complete Section I, II, or III below as applicable.

SECTION I – CATALOG PRICE *(See Instructions for items 7 thru 11 on reverse.)*

7. CATALOG IDENTIFICATION AND DATE	8. SALES PERIOD COVERED FROM	TO

9. CATEGORIES OF SALES	TOTAL UNITS SOLD*	10. REMARKS
a. U.S. Government sales		
b. Sales at catalog price to general public		
c. Other sales to general public		

**If your accounting system does not provide precise information, insert your best estimate and explain the basis for it in Item 10, REMARKS. Continue on a separate sheet, if necessary.*

11. LIST THREE SALES OF THE ITEM OFFERED

SALES CATEGORY			DATE	NO. OF UNITS SOLD	PRICE/UNIT
a.	☐ B	☐ C			$
b.	☐ B	☐ C			$
c.	☐ B	☐ C			$

SECTION II – MARKET PRICE *(See Instructions for item 12 on reverse.)*

12. SET FORTH THE SOURCE AND DATE OR PERIOD OF THE MARKET QUOTATION OR OTHER BASE FOR MARKET PRICE, THE BASE AMOUNT, AND APPLICABLE DISCOUNTS.

SECTION III – LAW OR REGULATION *(See Instructions for item 13 on reverse.)*

13. IDENTIFY THE LAW OR REGULATION ESTABLISHING THE PRICE OFFERED

REPRESENTATION *(See Instructions for item 14 on reverse.)*

The offeror represents that all statements made above and on attachments submitted are accurate and are submitted for the purpose of claiming exemption from requirements for submitting certified cost or pricing data. The offeror also represents that, except as stated in an attachment, a like claim for exemption involving the same or a substantially similar item has not been denied by a Government Contracting Officer within the last 2 years. Pending consideration of the proposal supported by this submission and, if this proposal or a modification of it is accepted by the Government, until the expiration of 3 years from the date of final payment under a contract resulting from this proposal, the Contracting Officer or any other authorized employee of the United States Government is granted access to books, records, documents, and other supporting data that will permit verification of the claim.

14. TYPED NAME, TITLE, AND FIRM	15. SIGNATURE	16. DATE OF SUBMISSION

NSN 7540-01-142-9846
1412-101

STANDARD FORM 1412 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.215-2(b)

INSTRUCTIONS TO OFFERORS SUBMITTING CLAIM FOR EXEMPTION FROM SUBMISSION OF CERTIFIED COST OR PRICING DATA

Item 7. Attach a copy of the catalog, or the appropriate pages covering price and published discounts, or a statement that the catalog is on file in the buying office to which this proposal is being made. Catalog price, is a price that is included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. To justify a catalog price exemption for the Government item, the catalog item must be identical or must be so similar in material and design that any price difference or its absence can be evaluated solely by price analysis (see FAR 15.805-2). In the latter case, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences, how the proposed price is derived from the catalog price.

Item 8. This period should include the most recent regular monthly, quarterly, or other period for which sales data are reasonably available and should extend back only far enough to provide a total period representative of average sales. You may also attach sales data for a prior representative period if for any reason recent sales are abnormal and the prior period is sufficiently recent (not more than 2 years preceding) to support the proposed price for the Government item. In the latter case, you must explain, by price analysis only, how the proposed price is derived from the catalog sales for the prior period.

Item 9. (a) Include in Category A all sales of the catalog item (a) directly to the U.S. Government and its instrumentalities and (b) for U.S. Government use (sales directly to U.S. Government prime contractors, or their subcontractors or suppliers at any tier, for use as an end item, or as part of an end item, by the U.S. Government).

(b) Include in Category B all sales of the catalog item made strictly at the catalog price, less only published discounts, to the general public (i.e., catalog price sales other than those (i) to affiliates of the offeror or (ii) included in Category A (Instruction 9(a)).

(c) Include in Category C all sales to the general public that were not made strictly at the catalog price or that were made at special discounts or discount rates not published in the catalog.

Item 11. On line a. insert information on the lowest price at which Category B or C sales of the offered item was made during the period, regardless of quantity.

On lines b. and c. insert sales information in the following manner.

a. Give the lowest price Category C sales of comparable quantities. If there were no sales of comparable quantities, then give

b. The lowest price Category C sales of quantities most nearly the quantity being offered. If there were no sales of Category C, then give

c. The lowest price Category B sales of comparable quantities. If there were no sales of comparable quantities, then give

d. The lowest price Category B sales of quantities most nearly the quantity being offered.

Attach a complete explanation (i) if you, during the period covered, offered special discounts not included in the catalog, or (ii) if the price proposed is not the lowest price at which a sale was made to any customer during that period for like items and comparable quantities.

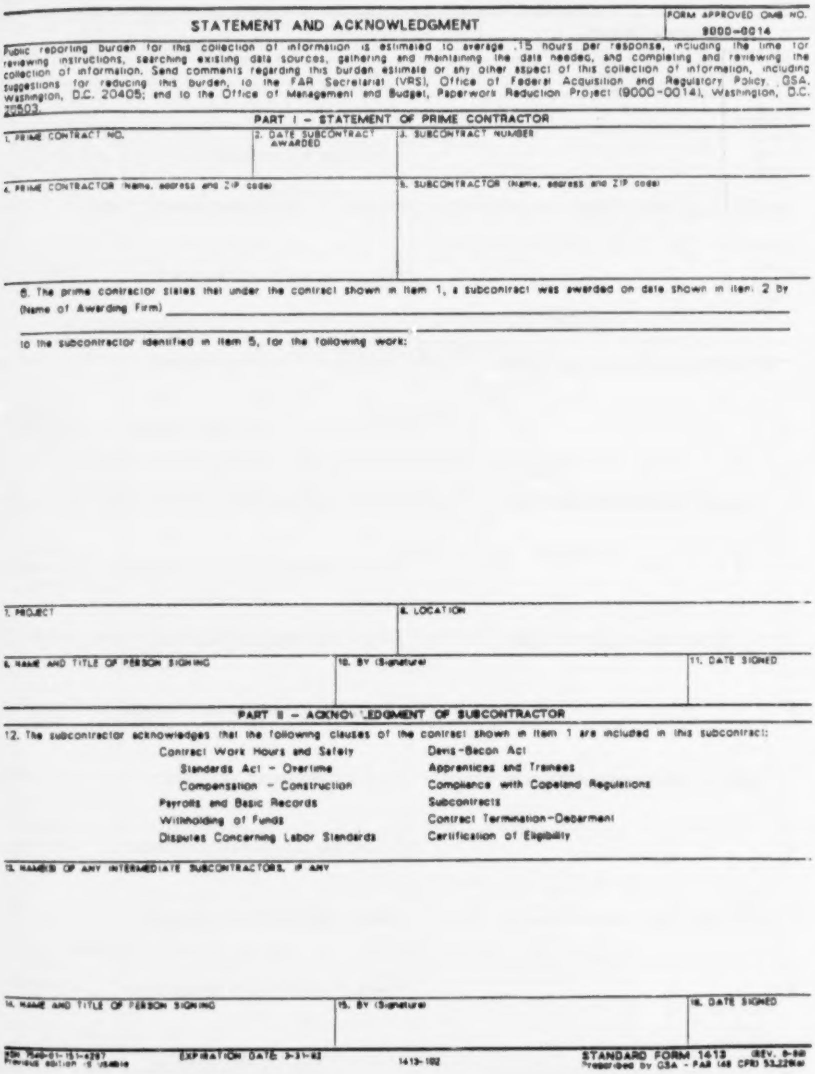
Item 12. Market price is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, that can be substantiated from sources independent of the manufacturer or vendor. There must be a sufficient number of commercial buyers so that their purchases establish an ascertainable current market price for the item or service. The nature of this market should be described. To justify a market-price exemption, the item or service being purchased must be identical to the commercial item or service or must be so similar in material and design (for supplies) or in work and facilities (for services) that any price difference or its absence can be evaluated solely by price analysis (see FAR 15.805-2). In the latter case, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences, how the proposed price is derived from the market price.

Item 13. Identify the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

Item 14. Insert the name, title, and firm of the person authorized by the offeror to sign this form.

STANDARD FORM 1412 BACK (10-84)

53.301-1413 Standard Form 1413, Statement and Acknowledgment.



STATEMENT AND ACKNOWLEDGMENT	FORM APPROVED OMB NO. 9000-0014

Public reporting burden for this collection of information is estimated to average .15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, D.C. 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR (Name, address and ZIP code)	5. SUBCONTRACTOR (Name, address and ZIP code)

6. The prime contractor states that under the contract shown in item 1, a subcontract was awarded on date shown in item 2 by (Name of Awarding Firm) ______________________

to the subcontractor identified in item 5, for the following work:

7. PROJECT	8. LOCATION

9. NAME AND TITLE OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in item 1 are included in this subcontract:

Contract Work Hours and Safety Standards Act - Overtime Compensation - Construction	Davis-Bacon Act
Payrolls and Basic Records	Apprentices and Trainees
Withholding of Funds	Compliance with Copeland Regulations
Disputes Concerning Labor Standards	Subcontracts
	Contract Termination-Debarment
	Certification of Eligibility

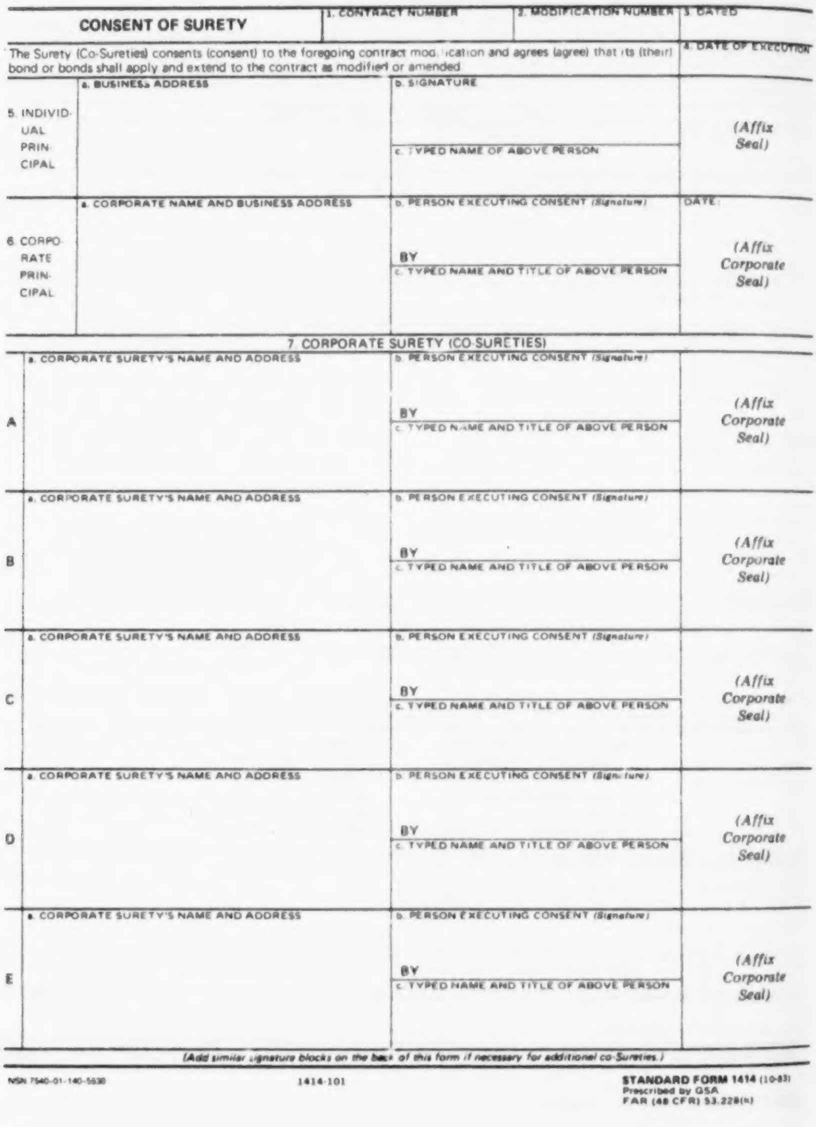
13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

14. NAME AND TITLE OF PERSON SIGNING	15. BY (Signature)	16. DATE SIGNED

NSN 7540-01-151-4297 EXPIRATION DATE 3-31-92 1413-102 STANDARD FORM 1413 (REV. 8-89)
Previous edition is usable Prescribed by GSA - FAR (48 CFR) 53.222(e)

[54 FR 48998, Nov. 28, 1989]

53.301-1414 Standard Form 1414, Consent of Surety.



CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED
The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended			4. DATE OF EXECUTION

5. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE c. TYPED NAME OF ABOVE PERSON	*(Affix Seal)*
6. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	DATE: *(Affix Corporate Seal)*

7. CORPORATE SURETY (CO-SURETIES)

A	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
B	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
C	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
D	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
E	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties.)

NSN 7540-01-140-5530 1414-101

STANDARD FORM 1414 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(k)

53.301-1415 Standard Form 1415, Consent of Surety and Increase of Penalty.

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on and after the execution of this consent, the penalty of the performance bond or bonds is increased by __________ dollars ($ ________). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a	$	$
b		
c		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. SIGNATURE * d. TYPED NAME	*(Seal)*
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. PERSON EXECUTING CONSENT *(Signature)* * BY d. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power of Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE SURETY(IES)

A	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
B	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
C	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

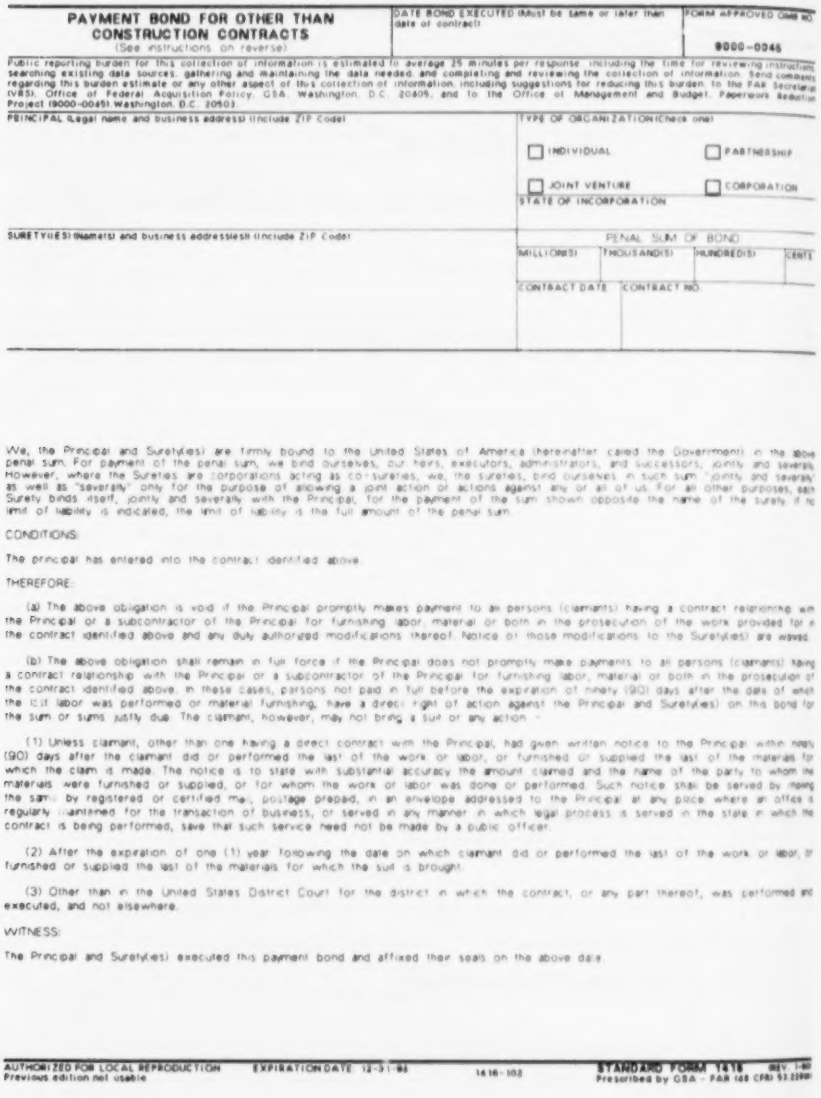
Add similar signature blocks on the back of this form if necessary for additional co-sureties.

NSN 7540-01-140-5531 1415-101

STANDARD FORM 1415 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(i)

[53 FR 43398, Oct. 26, 1988]

53.301-1416 Payment Bond for Other than Construction Contracts.



PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address) (Include ZIP Code)	TYPE OF ORGANIZATION (Check one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION			
	STATE OF INCORPORATION			
SURETY(IES) (Name(s) and business address(es)) (Include ZIP Code)	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE	CONTRACT NO.		

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the Principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action -

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration of one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District Court for the district in which the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE 12-31-92 1416-102 **STANDARD FORM 1416** REV. 1-90
Previous edition not usable Prescribed by GSA - FAR (48 CFR) 53.228(

"

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) & TITLE(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

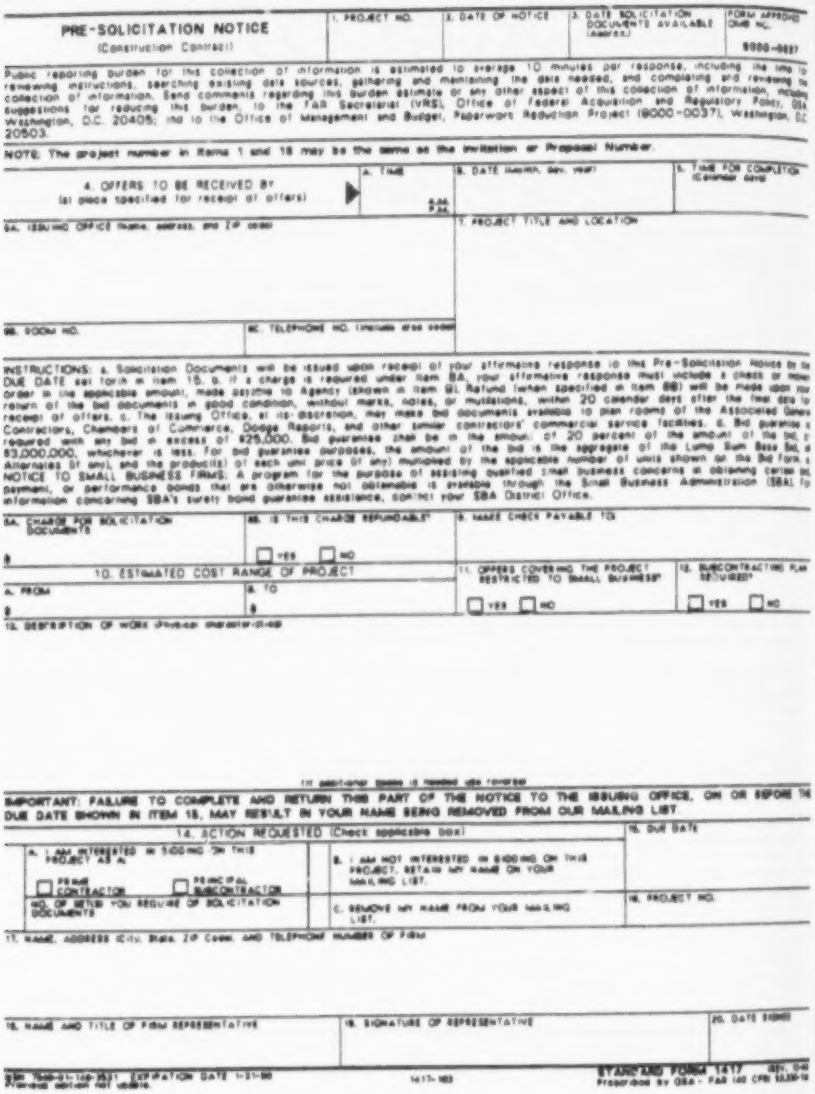
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 1416 (REV. 1-90) BACK

[55 FR 25567, June 21, 1990]

53.301-1417 Standard Form 1417, Pre-solicitation Notice (Construction Contract).



PRE-SOLICITATION NOTICE
(Construction Contract)

1. PROJECT NO.
2. DATE OF NOTICE
3. DATE SOLICITATION DOCUMENTS AVAILABLE (Approx.)
FORM APPROVED OMB NO. 9000-0037

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0037), Washington, D.C. 20503.

NOTE: The project number in Items 1 and 16 may be the same as the Invitation or Proposal Number.

4. OFFERS TO BE RECEIVED BY (at place specified for receipt of offers) ▶ a. TIME A.M. P.M. | b. DATE (Month, day, year)
5. TIME FOR COMPLETION (Calendar days)
6A. ISSUING OFFICE (Name, address, and ZIP code)
6B. ROOM NO.
6C. TELEPHONE NO. (Include area code)
7. PROJECT TITLE AND LOCATION

INSTRUCTIONS: a. Solicitation Documents will be issued upon receipt of your affirmative response to this Pre-Solicitation Notice by the DUE DATE set forth in Item 15. b. If a charge is required under Item 8A, your affirmative response must include a check or money order in the applicable amount, made payable to Agency (shown in Item 9). Refund (when specified in Item 8B) will be made upon return of the bid documents in good condition, without marks, notes, or mutilations, within 20 calendar days after the final date for receipt of offers. c. The Issuing Office, at its discretion, may make bid documents available to plan rooms of the Associated General Contractors, Chambers of Commerce, Dodge Reports, and other similar contractors' commercial service facilities. d. Bid guarantee is required with any bid in excess of $25,000. Bid guarantee shall be in the amount of 20 percent of the amount of the bid or $3,000,000, whichever is less. For bid guarantee purposes, the amount of the bid is the aggregate of the Lump Sum Base Bid, all Alternates (if any), and the product(s) of each unit price (if any) multiplied by the applicable number of units shown on the Bid Form. e. NOTICE TO SMALL BUSINESS FIRMS: A program for the purpose of assisting qualified small business concerns in obtaining certain bid, payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District Office.

8A. CHARGE FOR SOLICITATION DOCUMENTS $
8B. IS THIS CHARGE REFUNDABLE? ☐ YES ☐ NO
9. MAKE CHECK PAYABLE TO
10. ESTIMATED COST RANGE OF PROJECT: a. FROM $ | b. TO $
11. OFFERS COVERING THE PROJECT RESTRICTED TO SMALL BUSINESS? ☐ YES ☐ NO
12. SUBCONTRACTING PLAN REQUIRED? ☐ YES ☐ NO
13. DESCRIPTION OF WORK (Physical characteristics)

(If additional space is needed use reverse)

IMPORTANT: FAILURE TO COMPLETE AND RETURN THIS PART OF THE NOTICE TO THE ISSUING OFFICE, ON OR BEFORE THE DUE DATE SHOWN IN ITEM 15, MAY RESULT IN YOUR NAME BEING REMOVED FROM OUR MAILING LIST.

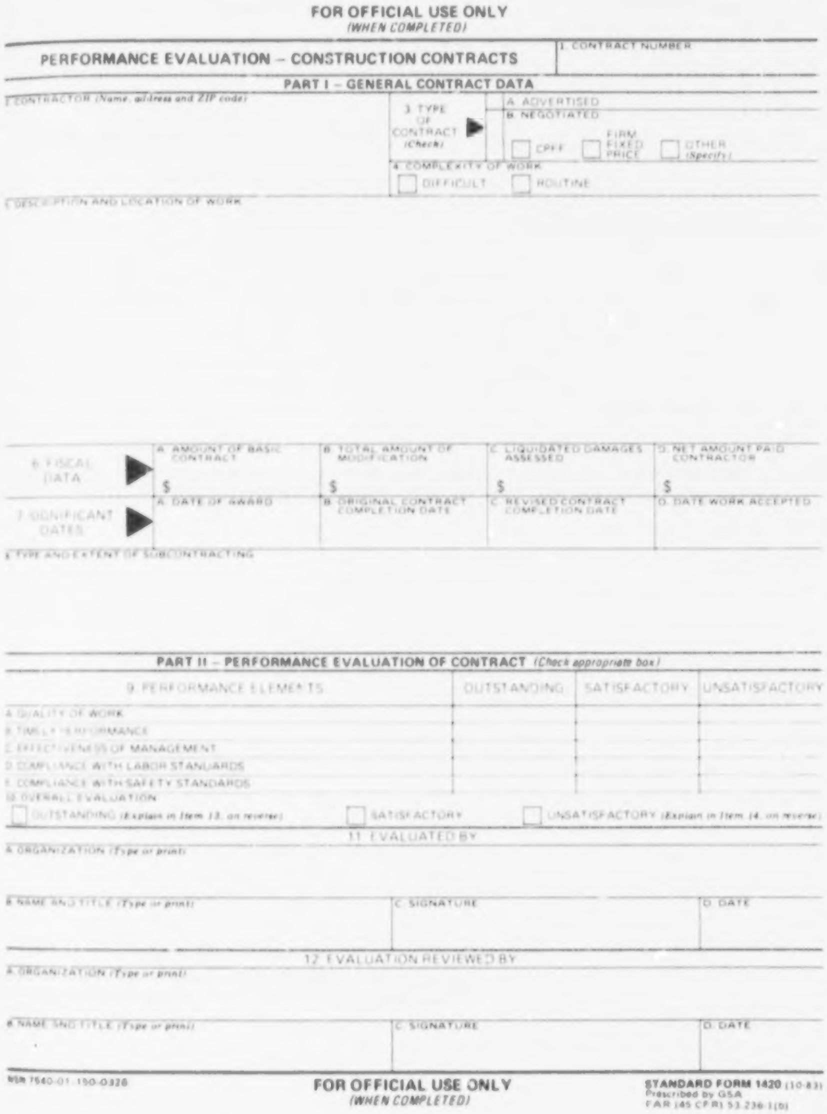
14. ACTION REQUESTED (Check applicable box)
A. I AM INTERESTED IN BIDDING ON THIS PROJECT AS A: ☐ PRIME CONTRACTOR ☐ PRINCIPAL SUBCONTRACTOR
NO. OF SETS YOU REQUIRE OF SOLICITATION DOCUMENTS
☐ B. I AM NOT INTERESTED IN BIDDING ON THIS PROJECT, RETAIN MY NAME ON YOUR MAILING LIST.
☐ C. REMOVE MY NAME FROM YOUR MAILING LIST.
15. DUE DATE
16. PROJECT NO.
17. NAME, ADDRESS (City, State, ZIP Code), AND TELEPHONE NUMBER OF FIRM
18. NAME AND TITLE OF FIRM REPRESENTATIVE
19. SIGNATURE OF REPRESENTATIVE
20. DATE SIGNED

NSN 7540-01-155-3537 EXPIRATION DATE 1-31-90
Previous edition not usable.
1417-103
STANDARD FORM 1417 (REV. [illegible])
Prescribed by GSA - FAR (48 CFR [illegible])

[54 FR 29288, July 11, 1989]

53.301-1419 [Reserved]

53.301-1420 Standard Form 1420, Performance Evaluation—Construction Contracts.



FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

PERFORMANCE EVALUATION – CONSTRUCTION CONTRACTS	1. CONTRACT NUMBER

PART I – GENERAL CONTRACT DATA

2. CONTRACTOR *(Name, address and ZIP code)*	3. TYPE OF CONTRACT *(Check)* ▶	A. ADVERTISED
		B. NEGOTIATED ☐ CPFF ☐ FIRM FIXED PRICE ☐ OTHER *(Specify)*
	4. COMPLEXITY OF WORK ☐ DIFFICULT ☐ ROUTINE	

5. DESCRIPTION AND LOCATION OF WORK

6. FISCAL DATA ▶	A. AMOUNT OF BASIC CONTRACT $	B. TOTAL AMOUNT OF MODIFICATION $	C. LIQUIDATED DAMAGES ASSESSED $	D. NET AMOUNT PAID CONTRACTOR $
7. SIGNIFICANT DATES ▶	A. DATE OF AWARD	B. ORIGINAL CONTRACT COMPLETION DATE	C. REVISED CONTRACT COMPLETION DATE	D. DATE WORK ACCEPTED

8. TYPE AND EXTENT OF SUBCONTRACTING

PART II – PERFORMANCE EVALUATION OF CONTRACT *(Check appropriate box)*

9. PERFORMANCE ELEMENTS	OUTSTANDING	SATISFACTORY	UNSATISFACTORY
A. QUALITY OF WORK			
B. TIMELY PERFORMANCE			
C. EFFECTIVENESS OF MANAGEMENT			
D. COMPLIANCE WITH LABOR STANDARDS			
E. COMPLIANCE WITH SAFETY STANDARDS			

10. OVERALL EVALUATION

☐ OUTSTANDING *(Explain in Item 13, on reverse)* ☐ SATISFACTORY ☐ UNSATISFACTORY *(Explain in Item 14, on reverse)*

11. EVALUATED BY

A. ORGANIZATION *(Type or print)*		
B. NAME AND TITLE *(Type or print)*	C. SIGNATURE	D. DATE

12. EVALUATION REVIEWED BY

A. ORGANIZATION *(Type or print)*		
B. NAME AND TITLE *(Type or print)*	C. SIGNATURE	D. DATE

NSN 7540-01-150-0326

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

STANDARD FORM 1420 (10-83)
Prescribed by GSA
FAR (45 CFR) 53.236-1(b)

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

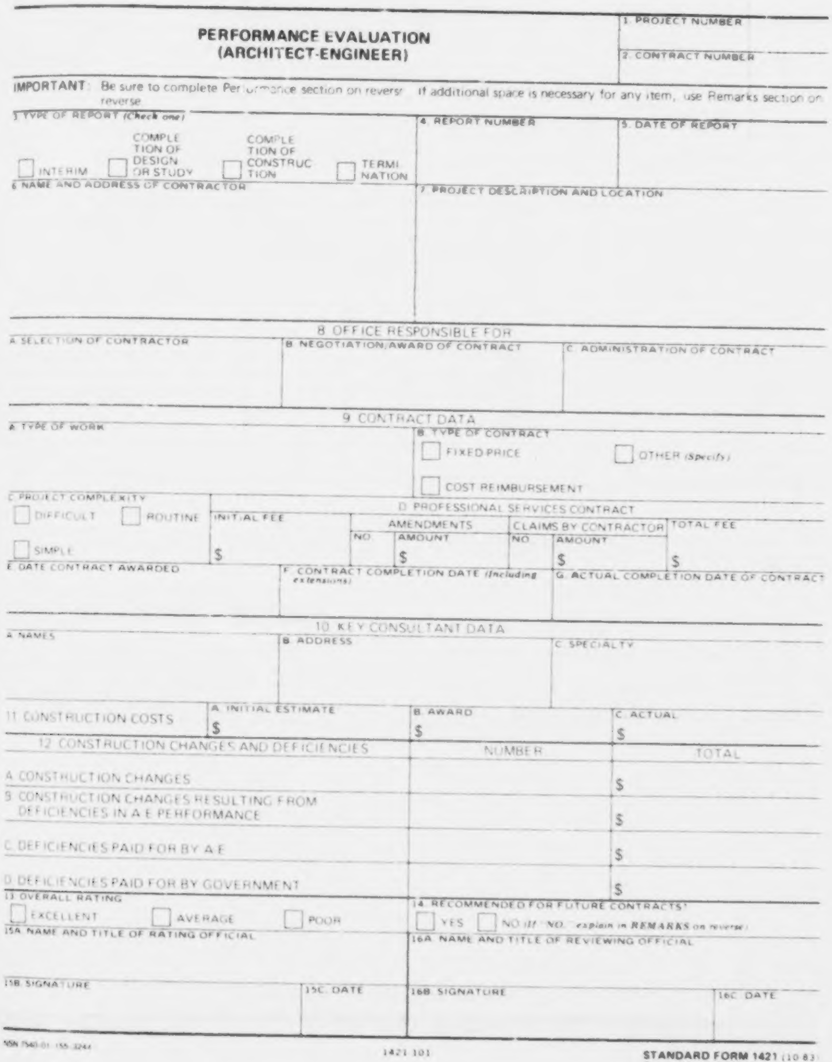
13. REMARKS ON OUTSTANDING PERFORMANCE - AS INDICATED BY THE CONTRACTOR'S PERFORMANCE ON THIS CONTRACT. IF YOU CONSIDER THE CONTRACTOR TO BE OUTSTANDING, SET FORTH FACTUAL DATA SUPPORTING THIS OBSERVATION. THESE DATA MUST BE IN SUFFICIENT DETAIL TO ASSIST CONTRACTING OFFICERS IN SELECTING CONTRACTORS THAT HAVE DEMONSTRATED OUTSTANDING QUALITY OF WORK AND RELIABILITY. *(Continue on separate sheet, if needed.)*

14. EXPLANATION OF UNSATISFACTORY EVALUATION - FOR EACH UNSATISFACTORY ELEMENT, PROVIDE FACTS CONCERNING SPECIFIC EVENTS OR ACTIONS TO JUSTIFY THE EVALUATION *(e.g., extent of Government inspection required, rework required, subcontracting, cooperation of contractor, quality of workmen and adequacy of equipment)*. THESE DATA MUST BE IN SUFFICIENT DETAIL TO ASSIST CONTRACTING OFFICERS IN DETERMINING THE CONTRACTOR'S RESPONSIBILITY. *(Continue on separate sheet, if needed.)*

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

STANDARD FORM 1420 BACK (10-83)

53.301-1421 Standard Form 1421, Performance Evaluation (Architect-Engineer).



PERFORMANCE EVALUATION
(ARCHITECT-ENGINEER)

1. PROJECT NUMBER

2. CONTRACT NUMBER

IMPORTANT: Be sure to complete Performance section on reverse. If additional space is necessary for any item, use Remarks section on reverse.

3. TYPE OF REPORT *(Check one)*

☐ INTERIM ☐ COMPLETION OF DESIGN OR STUDY ☐ COMPLETION OF CONSTRUCTION ☐ TERMINATION

4. REPORT NUMBER

5. DATE OF REPORT

6. NAME AND ADDRESS OF CONTRACTOR

7. PROJECT DESCRIPTION AND LOCATION

8. OFFICE RESPONSIBLE FOR

A. SELECTION OF CONTRACTOR	B. NEGOTIATION/AWARD OF CONTRACT	C. ADMINISTRATION OF CONTRACT

9. CONTRACT DATA

A. TYPE OF WORK

B. TYPE OF CONTRACT

☐ FIXED PRICE ☐ OTHER *(Specify)*

☐ COST REIMBURSEMENT

C. PROJECT COMPLEXITY

☐ DIFFICULT ☐ ROUTINE ☐ SIMPLE

D. PROFESSIONAL SERVICES CONTRACT

INITIAL FEE	AMENDMENTS		CLAIMS BY CONTRACTOR		TOTAL FEE
	NO.	AMOUNT	NO.	AMOUNT	
$		$		$	$

E. DATE CONTRACT AWARDED

F. CONTRACT COMPLETION DATE *(Including extensions)*

G. ACTUAL COMPLETION DATE OF CONTRACT

10. KEY CONSULTANT DATA

A. NAMES	B. ADDRESS	C. SPECIALTY

11. CONSTRUCTION COSTS	A. INITIAL ESTIMATE	B. AWARD	C. ACTUAL
	$	$	$

12. CONSTRUCTION CHANGES AND DEFICIENCIES	NUMBER	TOTAL
A. CONSTRUCTION CHANGES		$
B. CONSTRUCTION CHANGES RESULTING FROM DEFICIENCIES IN A-E PERFORMANCE		$
C. DEFICIENCIES PAID FOR BY A-E		$
D. DEFICIENCIES PAID FOR BY GOVERNMENT		$

13. OVERALL RATING

☐ EXCELLENT ☐ AVERAGE ☐ POOR

14. RECOMMENDED FOR FUTURE CONTRACTS?

☐ YES ☐ NO *(If "NO," explain in REMARKS on reverse)*

15A. NAME AND TITLE OF RATING OFFICIAL

16A. NAME AND TITLE OF REVIEWING OFFICIAL

15B. SIGNATURE

15C. DATE

16B. SIGNATURE

16C. DATE

NSN 7540-01-155-3244

1421-101

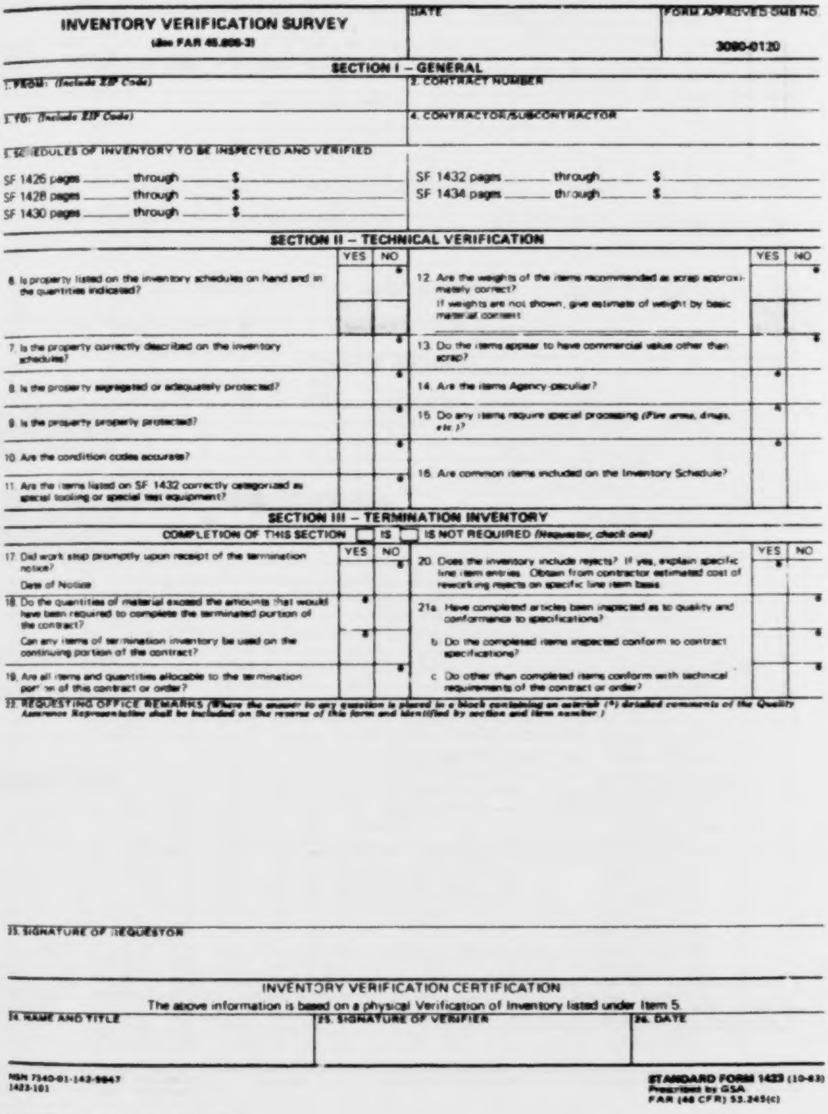
STANDARD FORM 1421 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.236-2(d)

					PERFORMANCE									
STAGES OF SERVICES *(As applicable)*					NOT APPLICABLE	RATING FACTORS/RATINGS								RATED BY
						ACCURACY	COMPLETENESS	COOPERATION	COORDINATION	MANAGEMENT	MEETING SCHEDULE	PERSONNEL ABILITY	WORK QUALITY	CODE LEGEND + EXCELLENT A AVERAGE P POOR N/A NOT APPLICABLE NI NO INFORMATION
														SIGNATURE AND DATE
CONCEPTS	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH										
				STRU.										
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH										
				ELEC.										
TENTATIVES	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH.										
				STRUC.										
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH.										
				ELEC.										
WORKING DRAWINGS	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH.										
				STRUC.										
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH.										
				ELEC.										
ESTIMATES				A/S										
				M/E										
CRITICAL PATH METHOD				PRE-AWARD										
				POST AWARD										
POST CONSTRUCTION CONTRACT SERVICES				SHOP DWGS										
				MANUALS										
INSPECTION				FIELD										
				OFFICE										
SOLICITATION DOCUMENTS														

REMARKS

STANDARD FORM 1421 BACK (10-83)

53.301-1423 Standard Form 1423, Inventory Verification Survey.



INVENTORY VERIFICATION SURVEY (See FAR 45.606-3)	DATE	FORM APPROVED OMB NO. 3090-0120

SECTION I – GENERAL

1. FROM: *(Include ZIP Code)*	2. CONTRACT NUMBER
3. TO: *(Include ZIP Code)*	4. CONTRACTOR/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages ______ through ______ $______
SF 1428 pages ______ through ______ $______
SF 1430 pages ______ through ______ $______
SF 1432 pages ______ through ______ $______
SF 1434 pages ______ through ______ $______

SECTION II – TECHNICAL VERIFICATION

	YES	NO		YES	NO
6. Is property listed on the inventory schedules on hand and in the quantities indicated?		*	12. Are the weights of the items recommended as scrap approximately correct? If weights are not shown, give estimate of weight by basic material content		*
7. Is the property correctly described on the inventory schedules?		*	13. Do the items appear to have commercial value other than scrap?		*
8. Is the property segregated or adequately protected?		*	14. Are the items Agency-peculiar?	*	
9. Is the property properly protected?		*	15. Do any items require special processing *(Fire arms, drugs, etc.)*?	*	
10. Are the condition codes accurate?		*	16. Are common items included on the Inventory Schedule?	*	
11. Are the items listed on SF 1432 correctly categorized as special tooling or special test equipment?		*			

SECTION III – TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requester, check one)*

	YES	NO		YES	NO
17. Did work stop promptly upon receipt of the termination notice? Date of Notice		*	20. Does the inventory include rejects? If yes, explain specific line item entries. Obtain from contractor estimated cost of reworking rejects on specific line item basis	*	
18. Do the quantities of material exceed the amounts that would have been required to complete the terminated portion of the contract?	*		21a. Have completed articles been inspected as to quality and conformance to specifications?		*
Can any items of termination inventory be used on the continuing portion of the contract?	*		b. Do the completed items inspected conform to contract specifications?		*
19. Are all items and quantities allocable to the termination portion of this contract or order?		*	c. Do other than completed items conform with technical requirements of the contract or order?		*

22. REQUESTING OFFICE REMARKS *(Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the Quality Assurance Representative shall be included on the reverse of this form and identified by section and item number.)*

23. SIGNATURE OF REQUESTOR

INVENTORY VERIFICATION CERTIFICATION

The above information is based on a physical Verification of Inventory listed under Item 5.

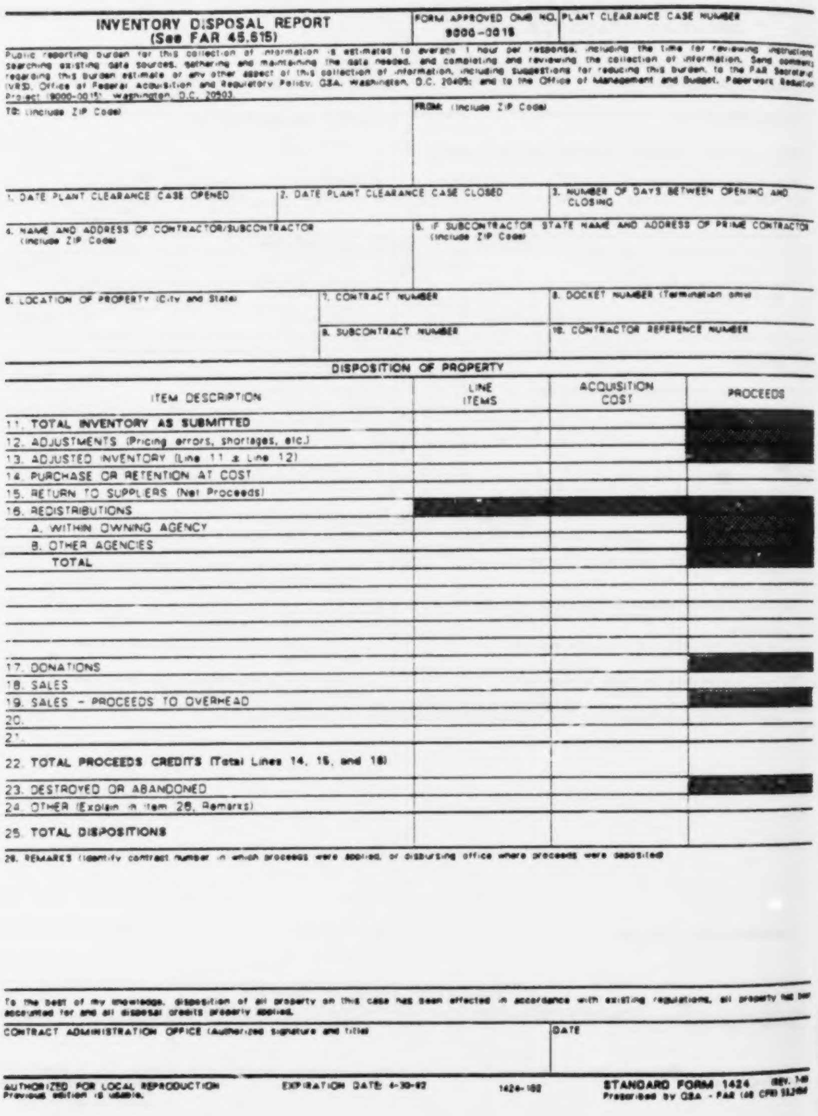
24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

NSN 7540-01-142-9847
1423-101

STANDARD FORM 1423 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(c)

[54 FR 34759, Aug. 21, 1989]

53.301-1424 Standard Form 1424, Inventory Disposal Report.



INVENTORY DISPOSAL REPORT (See FAR 45.615)	FORM APPROVED OMB NO. 9000-0015	PLANT CLEARANCE CASE NUMBER

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

TO: (Include ZIP Code)	FROM: (Include ZIP Code)

1. DATE PLANT CLEARANCE CASE OPENED	2. DATE PLANT CLEARANCE CASE CLOSED	3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING

4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR (Include ZIP Code)	5. IF SUBCONTRACTOR STATE NAME AND ADDRESS OF PRIME CONTRACTOR (Include ZIP Code)

6. LOCATION OF PROPERTY (City and State)	7. CONTRACT NUMBER	8. DOCKET NUMBER (Termination only)
	9. SUBCONTRACT NUMBER	10. CONTRACTOR REFERENCE NUMBER

DISPOSITION OF PROPERTY

ITEM DESCRIPTION	LINE ITEMS	ACQUISITION COST	PROCEEDS
11. **TOTAL INVENTORY AS SUBMITTED**			
12. ADJUSTMENTS (Pricing errors, shortages, etc.)			
13. ADJUSTED INVENTORY (Line 11 ± Line 12)			
14. PURCHASE OR RETENTION AT COST			
15. RETURN TO SUPPLIERS (Net Proceeds)			
16. REDISTRIBUTIONS			
A. WITHIN OWNING AGENCY			
B. OTHER AGENCIES			
TOTAL			
17. DONATIONS			
18. SALES			
19. SALES – PROCEEDS TO OVERHEAD			
20.			
21.			
22. **TOTAL PROCEEDS CREDITS** (Total Lines 14, 15, and 18)			
23. DESTROYED OR ABANDONED			
24. OTHER (Explain in item 26, Remarks)			
25. **TOTAL DISPOSITIONS**			

26. REMARKS (Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE (Authorized signature and title)	DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable.

EXPIRATION DATE: 4-30-92

1424-102

STANDARD FORM 1424 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR) 53.245

[55 FR 3893, Feb. 5, 1990]

53.301-1426 Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form).

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)
(See FAR Section 45.606 for Instructions)
☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT

DATE

FORM APPROVED OMB NO.
9000-0015

PROPERTY CLASSIFICATION

PAGE NO.

NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.

SUBCONTRACT OR P.O. NO.

REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION							CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST		CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
		FORM, SHAPE, ROLLING TREATMENT (When applicable, type of edge. Example: HR coiled strip, CR flat sheets box rod, tubing in straight length, etc.)	HEAT TREATMENT, TEMPER, HARDNESS FINISH, ETC. (Example: Annealed and pickled, 1/2 hard, polished, etc.)	SPECIFICATIONS, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION (Example: QQ-T-951-D B16-42 Alloy 7 Grade B)	DIMENSIONS							UNIT	TOTAL		
					THICKNESS (Wall for tubing, class for pipe, type for copper watertube)	WIDTH (OD for tube diameter of rod, size for pipe, manufacturer's die no. for extruded shapes)	LENGTH (b5)								
	(a)	(b)	(b1)	(b2)	(b3)	(b4)	FEET	INCHES	(c)	(d)	(d1)	(e)	(f)	(g)	

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, dated __________ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR

BY (Signature of Authorized Official)

TITLE

DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

EXPIRATION DATE: 4-30-92

1426-102

STANDARD FORM 1426 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.245(f)

[55 FR 3895, Feb. 5, 1990]

53.301-1427 Standard Form 1427, Inventory Schedule A—Construction Sheet (Metals in Mill Product Form).

INVENTORY SCHEDULE A - CONTINUATION SHEET
(METALS IN MILL PRODUCT FORM)

TYPE ☐ TERMINATION ☐ NONTERMINATION

DATE

FORM APPROVED OMB NO. 9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION							CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST		CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
		FORM, SHAPE, ROLLING TREATMENT	HEAT TREATMENT, TEMPER, HARDNESS, FINISH, ETC.	SPECIFICATIONS, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION	DIMENSIONS							UNIT	TOTAL		
					THICKNESS	WIDTH	LENGTH (b5)								
							FEET	INCHES							
	(a)	(b)	(b1)	(b2)	(b3)	(b4)			(c)	(d)	(d1)	(e)	(f)	(g)	

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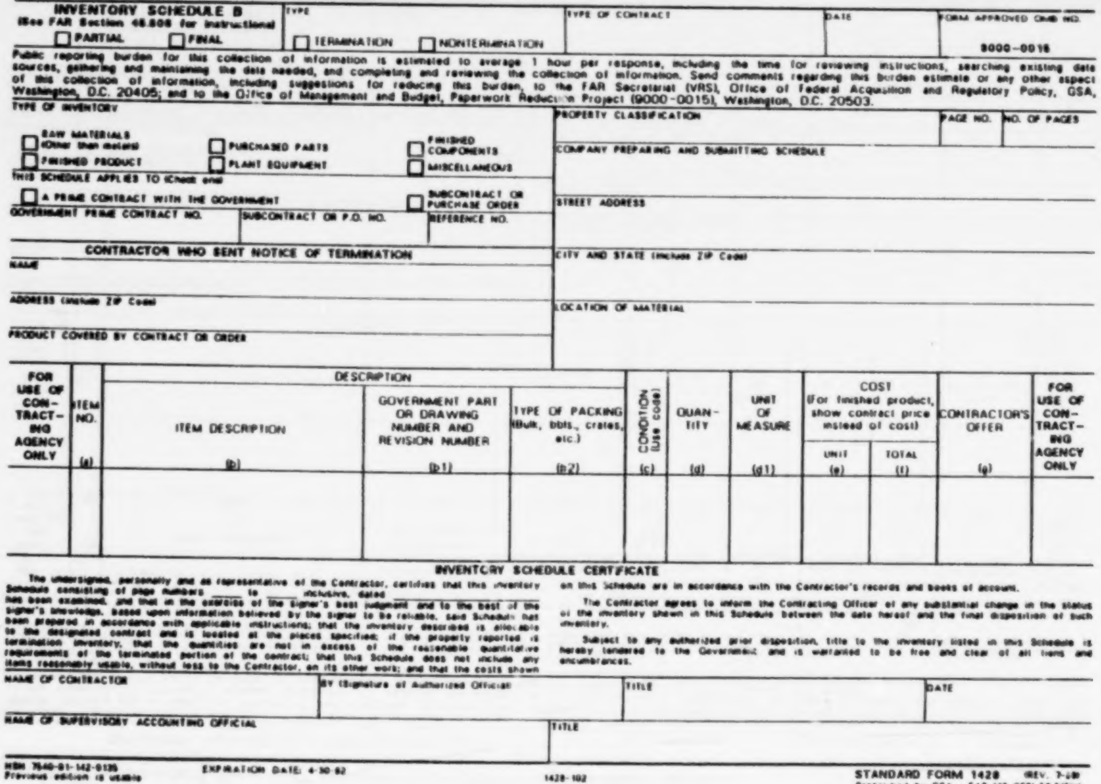
EXPIRATION DATE: 4-30-92

1427-102

STANDARD FORM 1427 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)

[55 FR 3897, Feb. 5, 1990]

53.301-1428 Standard Form 1428, Inventory Schedule B.



INVENTORY SCHEDULE B
(See FAR Section 45.606 for instructions)
☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT

DATE

FORM APPROVED OMB NO.
9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

TYPE OF INVENTORY
☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS
☐ FINISHED PRODUCT ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO.

SUBCONTRACT OR P.O. NO.

REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

PROPERTY CLASSIFICATION

PAGE NO.

NO. OF PAGES

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION			CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST (For finished product, show contract price instead of cost)		CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
		ITEM DESCRIPTION	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	TYPE OF PACKING (Bulk, bbls., crates, etc.)				UNIT	TOTAL		
	(a)	(b)	(b1)	(b2)	(c)	(d)	(d1)	(e)	(f)	(g)	

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR

BY (Signature of Authorized Official)

TITLE

DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

NSN 7540-01-142-0135
Previous edition is usable

EXPIRATION DATE: 4-30-92

1428-102

STANDARD FORM 1428 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.245(g)

[55 FR 3899, Feb. 5, 1990]

53.301-1429 Standard Form 1429, Inventory Schedule B—Continuation Sheet.

INVENTORY SCHEDULE B - CONTINUATION SHEET

TYPE ☐ TERMINATION ☐ NONTERMINATION

FORM APPROVED OMB NO. 9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503

TYPE OF INVENTORY

☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS ☐ FINISHED PRODUCTS ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION			CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost)		CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY
		ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REV. NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)				UNIT (e)	TOTAL (f)		

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Previous edition is usable

EXPIRATION DATE: 4-30-92

1429-102

STANDARD FORM 1429 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)

[55 FR 3901, Feb. 5, 1990]

53.301-1430 Standard Form 1430, Inventory Schedule C (Work-in-Process).

INVENTORY SCHEDULE C
(WORK-IN-PROCESS)
(See FAR Section 45.606 for Instructions)
☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT

DATE

FORM APPROVED OMB NO.
9000-0015

PAGE NO.

NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

THIS SCHEDULE APPLIES TO (Check one)

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.

SUBCONTRACT OR P.O. NO.

REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION		CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST		CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
		ITEM DESCRIPTION	ESTIMATED WEIGHT				UNIT	TOTAL		
	(a)	(b)	(b1)	(c)	(d)	(d1)	(e)	(f)	(g)	

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, dated __________ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR

BY (Signature of Authorized Official)

TITLE

DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

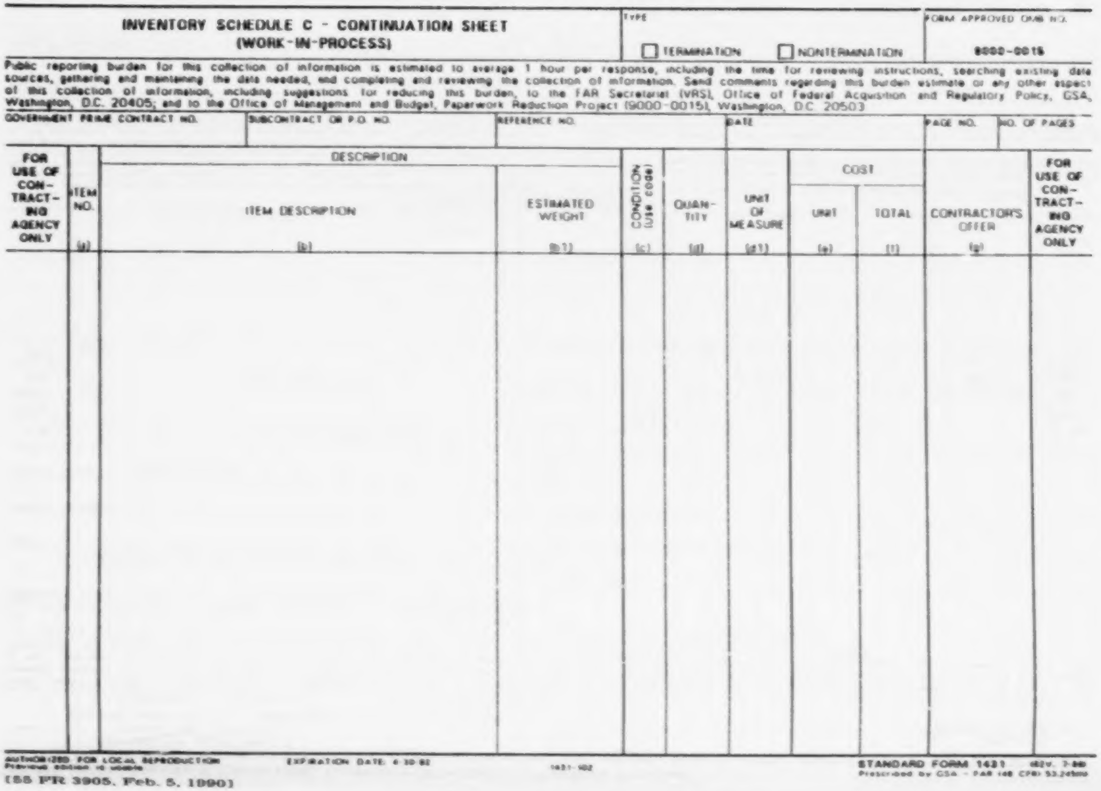
EXPIRATION DATE: 4-30-92

1430-102

STANDARD FORM 1430 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.245(e)

[55 FR 3903, Feb. 5, 1990]

53.301-1431 Inventory Schedule C—Continuation Sheet (Work-in-Process).



INVENTORY SCHEDULE C - CONTINUATION SHEET (WORK-IN-PROCESS)					TYPE ☐ TERMINATION ☐ NONTERMINATION				FORM APPROVED OMB NO. 9000-0015	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503										
GOVERNMENT PRIME CONTRACT NO.		SUBCONTRACT OR P.O. NO.	REFERENCE NO.			DATE			PAGE NO.	NO. OF PAGES
FOR USE OF CON-TRACT-ING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION					COST			FOR USE OF CON-TRACT-ING AGENCY ONLY
		ITEM DESCRIPTION (b)	ESTIMATED WEIGHT (b1)	CONDITION (use code) (c)	QUAN-TITY (d)	UNIT OF MEASURE (d1)	UNIT (e)	TOTAL (f)	CONTRACTOR'S OFFER (g)	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

EXPIRATION DATE 4-30-92

1431-102

STANDARD FORM 1431 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(m)

[55 FR 3905, Feb. 5, 1990]

53.301-1432 Inventory Schedule D (Special Tooling and Special Test Equipment).

INVENTORY SCHEDULE D
(SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)
(See FAR Section 45.606 for Instructions)
☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT

DATE

FORM APPROVED OMB NO.
9000-0016

PROPERTY CLASSIFICATION

PAGE NO.

NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO.

SUBCONTRACT OR P.O. NO.

REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	ITEM DESCRIPTION	CONDITION (Use code)	QUANTITY	COST				CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
					UNIT	TOTAL	APPLICABLE TO THIS CONTRACT			
							TO ENTIRE CONTRACT	TO PORTION NOT TO BE COMPLETED		
	(a)	(b)	(c)	(d)	(e)	(f)	(f1)	(f2)	(g)	

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers _____ to _____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR

BY (Signature of Authorized Official)

TITLE

DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

EXPIRATION DATE: 4-30-92

1432-102

STANDARD FORM 1432 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)

[55 FR 3907, Feb. 5, 1990]

53.301-1433 Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

INVENTORY SCHEDULE D - CONTINUATION SHEET (SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)	TYPE ☐ TERMINATION ☐ NONTERMINATION	DATE	FORM APPROVED OMB NO. 9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, DC 20503

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

FOR USE OF CON-TRACT-ING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	CONDITION (USE CODE) (c)	QUAN-TITY (d)	COST				CONTRACTOR'S OFFER (g)	FOR USE OF CON-TRACT-ING AGENCY ONLY
					UNIT (e)	TOTAL (f)	APPLICABLE TO THIS CONTRACT			
							TO ENTIRE CONTRACT (f1)	TO PORTION NOT TO BE COMPLETED (f2)		

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

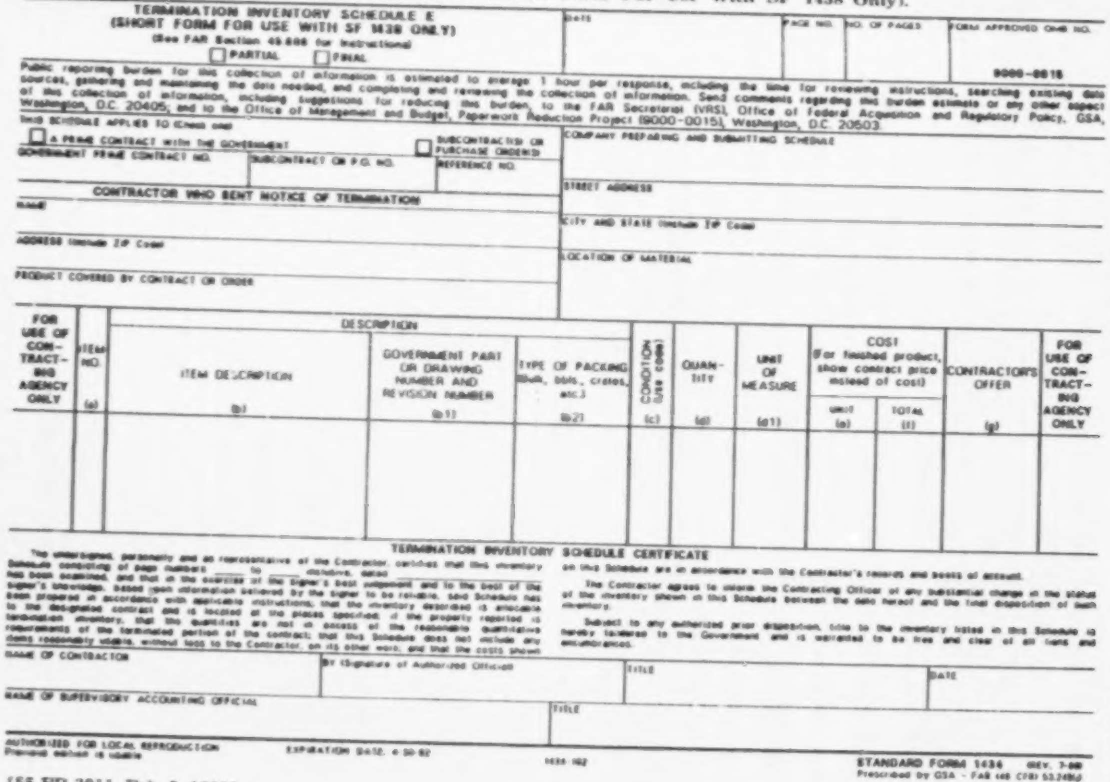
EXPIRATION DATE: 4-30-92

1433-102

STANDARD FORM 1433 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(d)

[55 FR 3909, Feb. 5, 1990]

53.301-1434 Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).



TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH SF 1438 ONLY)
(See FAR Section 49.606 for Instructions)

☐ PARTIAL ☐ FINAL

DATE	PAGE NO.	NO. OF PAGES	FORM APPROVED OMB NO. 9000-0015

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0015), Washington, D.C. 20503.

THIS SCHEDULE APPLIES TO (Check one)

☐ A PRIME CONTRACT with the GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CON-TRACT-ING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION			CONDITION (Use code) (c)	QUAN-TITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost)		CONTRACTOR'S OFFER (g)	FOR USE OF CON-TRACT-ING AGENCY ONLY
		ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)				UNIT (e)	TOTAL (f)		

TERMINATION INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers ____ to ____ inclusive, dated ________ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby transferred to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of Authorized Official)	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL		TITLE	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

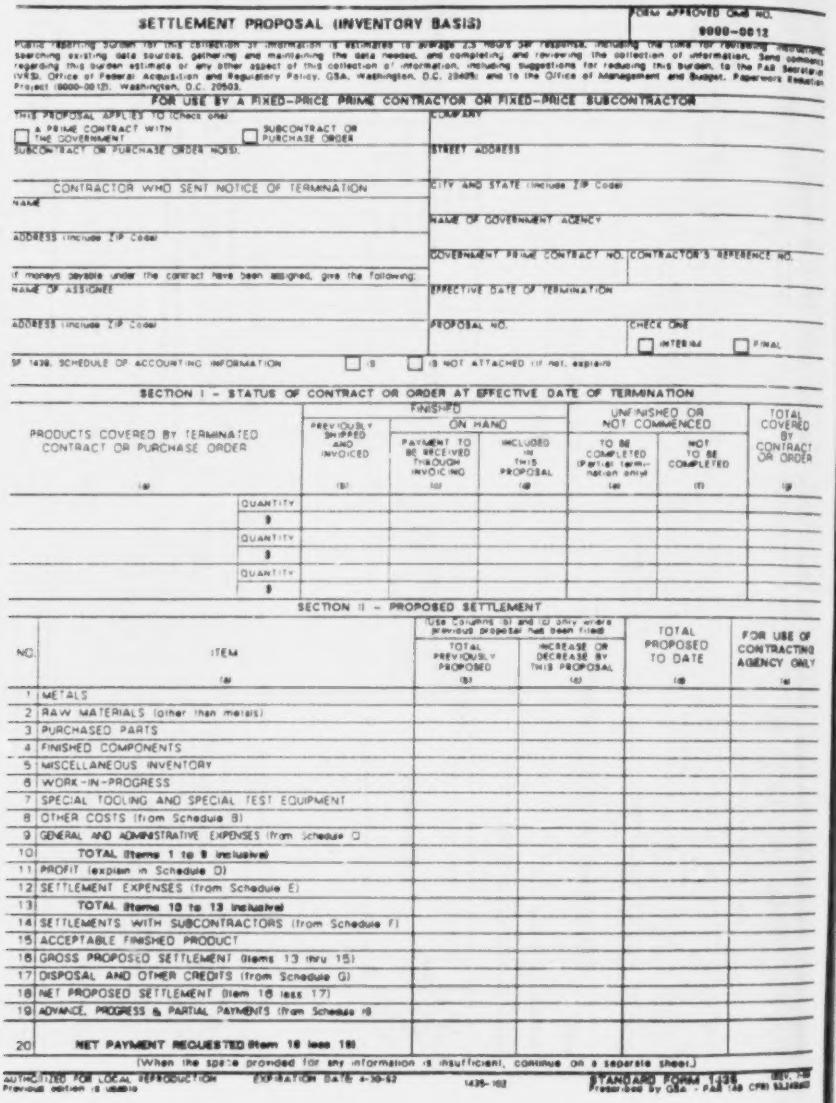
EXPIRATION DATE: 4-30-92

1434-102

STANDARD FORM 1434 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)

[55 FR 3911, Feb. 5, 1990]

53.301-1435 Settlement Proposal (Inventory Basis).



SETTLEMENT PROPOSAL (INVENTORY BASIS)

FORM APPROVED OMB NO.
9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one) ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER	COMPANY
SUBCONTRACT OR PURCHASE ORDER NO(S).	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION	CITY AND STATE (Include ZIP Code)
NAME	NAME OF GOVERNMENT AGENCY
ADDRESS (Include ZIP Code)	GOVERNMENT PRIME CONTRACT NO. / CONTRACTOR'S REFERENCE NO.
If moneys payable under the contract have been assigned, give the following: NAME OF ASSIGNEE	EFFECTIVE DATE OF TERMINATION
ADDRESS (Include ZIP Code)	PROPOSAL NO. / CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED (If not, explain)

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND				
			PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	INCLUDED IN THIS PROPOSAL (d)	TO BE COMPLETED (Partial termination only) (e)	NOT TO BE COMPLETED (f)	
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)		
1	METALS				
2	RAW MATERIALS (other than metals)				
3	PURCHASED PARTS				
4	FINISHED COMPONENTS				
5	MISCELLANEOUS INVENTORY				
6	WORK-IN-PROGRESS				
7	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT				
8	OTHER COSTS (from Schedule B)				
9	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
10	**TOTAL (Items 1 to 9 inclusive)**				
11	PROFIT (explain in Schedule D)				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	**TOTAL (Items 10 to 12 inclusive)**				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	ACCEPTABLE FINISHED PRODUCT				
16	GROSS PROPOSED SETTLEMENT (Items 13 thru 15)				
17	DISPOSAL AND OTHER CREDITS (from Schedule G)				
18	NET PROPOSED SETTLEMENT (Item 16 less 17)				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
20	**NET PAYMENT REQUESTED (Item 18 less 19)**				

(When the space provided for any information is insufficient, continue on a separate sheet.)

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EXPIRATION DATE 4-30-92

1435-102

STANDARD FORM 1435 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)

SCHEDULE A – ANALYSIS OF INVENTORY COST (Items . and 8)

Furnish the following information (unless not reasonably available) for inventories of finished components and work-in-progress included in the proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROGRESS				

NOTE.–Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B – OTHER COSTS (Item 8)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C – GENERAL AND ADMINISTRATIVE EXPENSES (Item 9)

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D – PROFIT (Item 11)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1435 (REV. 7-89) PAGE 2

SCHEDULE E – SETTLEMENT EXPENSES (Item 12)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F – SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G – DISPOSAL AND OTHER CREDITS (Item 17)

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1436 (REV. 7-89) PAGE 3

SCHEDULE H — ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

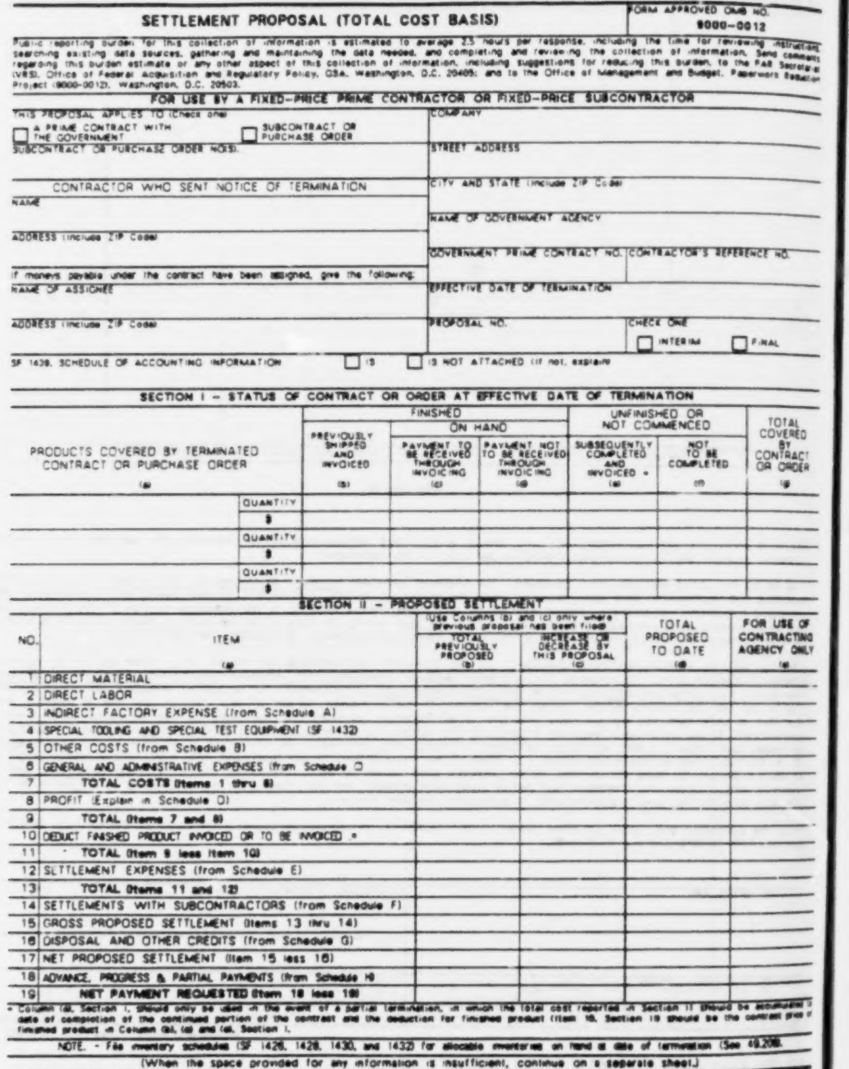
NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

STANDARD FORM 1435 (REV. 7-89) PAGE 4

[55 FR 3913, Feb. 5, 1990]

53.301-1436 Settlement Proposal (Total Cost Basis).



SETTLEMENT PROPOSAL (TOTAL COST BASIS)

FORM APPROVED OMB NO. 9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instruction searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretar (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reductio Project (9000-0012), Washington, D.C. 20503.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one)

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS (Include ZIP Code)

COMPANY

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO.

CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED (If not, explain)

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND				
			PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	SUBSEQUENTLY COMPLETED AND INVOICED * (e)	NOT TO BE COMPLETED (f)	
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE (from Schedule A)				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT (SF 1432)				
5	OTHER COSTS (from Schedule B)				
6	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
7	**TOTAL COSTS (Items 1 thru 6)**				
8	PROFIT (Explain in Schedule D)				
9	**TOTAL (Items 7 and 8)**				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED *				
11	**TOTAL (Item 9 less Item 10)**				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	**TOTAL (Items 11 and 12)**				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	GROSS PROPOSED SETTLEMENT (Items 13 thru 14)				
16	DISPOSAL AND OTHER CREDITS (from Schedule G)				
17	NET PROPOSED SETTLEMENT (Item 15 less 16)				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
19	**NET PAYMENT REQUESTED (Item 17 less 18)**				

* Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract pric finished product in Column (b), (c) and (e), Section I.

NOTE. - File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

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Previous edition is usable

EXPIRATION DATE 4-30-92

1436-103

STANDARD FORM 1436 REV.
Prescribed by GSA - FAR (48 CFR 53.249

SCHEDULE A – INDIRECT FACTORY EXPENSE (Item 3)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE.– Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B – OTHER COSTS (Item 5)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C – GENERAL AND ADMINISTRATIVE EXPENSES (Item 8)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D – PROFIT (Item 8)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1436 (REV. 7-89) PAGE 2

SCHEDULE E – SETTLEMENT EXPENSES (Item 12)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F – SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G – DISPOSAL AND OTHER CREDITS (Item 16)

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1436 (REV. [illegible]

SCHEDULE H – ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

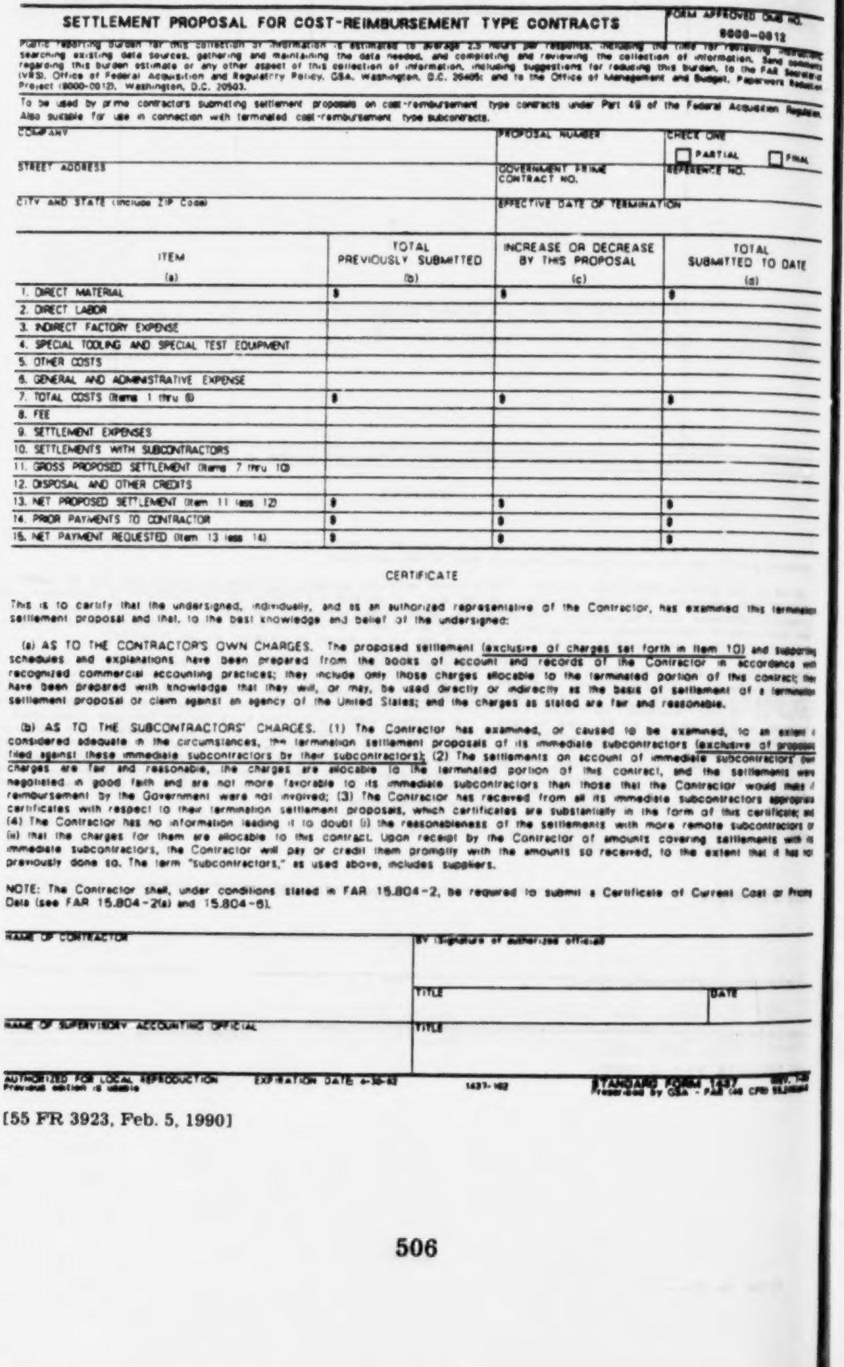
NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

STANDARD FORM 1436 (REV. 7-89) PAGE 4

[55 FR 3918, Feb. 5, 1990]

53.301-1437 Settlement Proposal for Cost-Reimbursement Type Contracts.



SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS	FORM APPROVED OMB NO. 9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE ☐ PARTIAL ☐ FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE (Include ZIP Code)	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	$	$	$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COSTS (Items 1 thru 6)	$	$	$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	$	$	$
14. PRIOR PAYMENTS TO CONTRACTOR	$	$	$
15. NET PAYMENT REQUESTED (Item 13 less 14)	$	$	$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

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1437-102

STANDARD FORM 1437 (REV. 1-90)
Prescribed by GSA - FAR (48 CFR 53.249)

[55 FR 3923, Feb. 5, 1990]

53.301-1438 Settlement Proposal (Short Form).

SETTLEMENT PROPOSAL (SHORT FORM)

FORM APPROVED OMB NO.
9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

For Use by a Prime Contractor or Subcontractor in Settlement of a Fixed Price Terminated Contract When Total Charges Claimed Are Less Than $10,000.

THIS PROPOSAL APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS (Include ZIP Code)

COMPANY (Prime or Subcontractor)

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
			ON HAND				
		PREVIOUSLY SHIPPED AND INVOICED (b)	PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	INCLUDED IN THIS PROPOSAL (d)	TO BE COMPLETED (Partial termination only) (e)	NOT TO BE COMPLETED (f)	
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II – PROPOSED SETTLEMENT

NO.	ITEM (Include only items allocable to the terminated portion of contract)	AMOUNT OF CHARGE
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING (from SF 1434)	$
2	CHARGE FOR WORK-IN-PROGRESS, RAW MATERIAL, ETC., ON HAND (from SF 1434)	$
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	$
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	$
5	GROSS PROPOSED SETTLEMENT (Sum of items 1 thru 4)	$
6	DISPOSAL AND OTHER CREDITS (from SF 1434, Col. 2)	$
7	NET PROPOSED SETTLEMENT (Item 5 less 6)	$
8	ADVANCE, PROGRESS, AND PARTIAL PAYMENTS	$
9	NET PAYMENT REQUESTED (Item 7 less 8)	$

List your inventory on SF 1434 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6, AND 7

I CERTIFY that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order. That the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposal(s) against agencies of the United States.

NAME OF YOUR COMPANY

BY (Signature of authorized official)

TITLE

DATE

(Where the space provided for any information is insufficient, continue on a separate sheet.)

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1438-102
STANDARD FORM 1438 REV. 7-89
Prescribed by GSA - FAR (48 CFR) 53.249(a)(3)

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of seperate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below $10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under items 2, 3, and 4, the following:

a. COSTS - Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

b. SETTLEMENT WITH SUBCONTRACTORS - Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.

c. SETTLEMENT EXPENSES - Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.

d. PROFIT - A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than $10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor your customer must be satisfied with your proposal.

STANDARD FORM 1438 (REV. 1-90) BACK

[55 FR 3925, Feb. 5, 1990]

53.301-1439 Schedule of Accounting Information.

SCHEDULE OF ACCOUNTING INFORMATION

FORM APPROVED OMB NO. 9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

To be used by prime contractors submitting termination proposals under Part 49 of the Federal Acquisition Regulation. Also suitable for use by subcontractor in effecting subcontract settlements with prime contractor or immediate subcontractor.

THIS PROPOSAL APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME AND ADDRESS (Include ZIP Code)

COMPANY (Prime or Subcontractor)

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO. | CONTRACTOR'S REFERENCE NO. | EFFECTIVE DATE OF TERMINATION

1. INDIVIDUAL IN YOUR ORGANIZATION FROM WHOM ADDITIONAL INFORMATION MAY BE REQUESTED ON QUESTIONS RELATING TO:

ACCOUNTING MATTERS		PROPERTY DISPOSAL	
NAME		NAME	
TITLE	TELEPHONE NO.	TITLE	TELEPHONE NO.
ADDRESS (Include ZIP Code)		ADDRESS (Include ZIP Code)	

2. ARE THE ACCOUNTS OF THE CONTRACTOR SUBJECT TO REGULAR PERIODIC EXAMINATION BY INDEPENDENT PUBLIC ACCOUNTANTS?
☐ YES ☐ NO (Name and address of accountants)

3. INDEPENDENT ACCOUNTANTS, IF ANY, WHO HAVE REVIEWED OR ASSISTED IN THE PREPARATION OF THE ATTACHED PROPOSAL

NAME	ADDRESS (Include ZIP Code)

4. GOVERNMENTAL AGENCY(IES) WHICH HAVE REVIEWED YOUR ACCOUNTS IN CONNECTION WITH PRIOR SETTLEMENT PROPOSALS DURING THE CURRENT AND PRECEDING FISCAL YEAR

NAME	ADDRESS (Include ZIP Code)

5. HAVE THERE BEEN ANY SIGNIFICANT DEVIATIONS FROM YOUR REGULAR ACCOUNTING PROCEDURES AND POLICIES IN ARRIVING AT THE COSTS SET FORTH IN THE ATTACHED PROPOSAL? (If "Yes," explain briefly)
☐ YES ☐ NO

6. WERE THE DETAILED COST RECORDS USED IN PREPARING THE PROPOSAL CONTROLLED BY AND IN AGREEMENT WITH YOUR GENERAL BOOKS OF ACCOUNT?
☐ YES ☐ NO

7. STATE METHOD OF ACCOUNTING FOR TRADE AND CASH DISCOUNTS EARNED, REBATES, ALLOWANCES, AND VOLUME PRICE ADJUSTMENTS. ARE SUCH ITEMS EXCLUDED FROM COSTS PROPOSED?
☐ YES ☐ NO

(Where the space provided for any information is insufficient, continue on a separate sheet.)

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1439-102
STANDARD FORM 1439 (REV. 1-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(8)

8. STATE METHOD OF RECORDING AND ABSORBING (1) GENERAL ENGINEERING AND GENERAL DEVELOPMENT EXPENSE AND (2) ENGINEERING AND DEVELOPMENT EXPENSE DIRECTLY APPLICABLE TO THE TERMINATED CONTRACT.

9. STATE TYPES AND SOURCE OF MISCELLANEOUS INCOME AND CREDITS AND MANNER OF RECORDING IN THE INCOME OR THE COST ACCOUNTS SUCH AS RENTAL OF YOUR FACILITIES TO OUTSIDE PARTIES, ETC.

10. METHOD OF ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSE.

11. ARE COSTS AND INCOME FROM CHANGE ORDERS SEGREGATED FROM OTHER CONTRACT COSTS AND INCOME? (If "Yes," by what method?)

☐ YES ☐ NO

12. METHOD OF COMPUTING PROFIT SHOWN IN THE ATTACHED PROPOSAL AND REASON FOR SELECTING THE METHOD USED. FURNISH ESTIMATE OF AMOUNT OR RATE OF PROFIT IN DOLLARS OR PERCENT ANTICIPATED HAD THE CONTRACT BEEN COMPLETED.

13. ARE SETTLEMENT EXPENSES APPLICABLE TO PREVIOUSLY TERMINATED CONTRACTS EXCLUDED FROM THE ATTACHED PROPOSAL? (If "No," explain)

☐ YES ☐ NO

14. DOES THE PROPOSAL INCLUDE CHARGES FOR MAJOR INVENTORY ITEMS AND PROPOSALS OF SUBCONTRACTORS COMMON TO THIS TERMINATED CONTRACT AND OTHER WORK OF THE CONTRACTOR? (If "Yes," explain the method used in allocating amounts to the terminated portion of this contract.)

☐ YES ☐ NO

15. EXPLAIN BRIEFLY YOUR METHOD OF PRICING INVENTORIES, INDICATING WHETHER MATERIAL HANDLING COST HAS BEEN INCLUDED IN CHARGES FOR MATERIALS.

16. ARE ANY PARTS, MATERIALS, OR FINISHED PRODUCT, KNOWN TO BE DEFECTIVE, INCLUDED IN THE INVENTORIES? (If "Yes," explain)

☐ YES ☐ NO

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1439 REV. 7-89 PAGE 2

17. WERE INVENTORY QUANTITIES BASED ON A PHYSICAL COUNT AS OF THE DATE OF TERMINATION? (If "NO," explain exceptions.)

☐ YES ☐ NO

18. DESCRIBE BRIEFLY THE NATURE OF INDIRECT EXPENSE ITEMS INCLUDED IN INVENTORY COSTS (See Schedule A, SF 1435) AND EXPLAIN YOUR METHOD OF ALLOCATION USED IN PREPARING THIS PROPOSAL, INCLUDING IF PRACTICABLE, THE RATES USED AND THE PERIOD OF TIME UPON WHICH THEY ARE BASED.

19. STATE GENERAL POLICIES RELATING TO DEPRECIATION AND AMORTIZATION OF FIXED ASSETS, BASES, UNDERLYING POLICIES.

20. DO THE COSTS SET FORTH IN THE ATTACHED PROPOSAL INCLUDE PROVISIONS FOR ANY RESERVES OTHER THAN DEPRECIATION RESERVES? (If "Yes," list such reserves)

☐ YES ☐ NO

21. STATE POLICY OR PROCEDURE FOR RECORDING AND WRITING OFF STARTING LOAD.

22. STATE POLICIES FOR DISTINGUISHING BETWEEN CHARGES TO CAPITAL (FIXED) ASSET ACCOUNTS AND TO REPAIR AND MAINTENANCE ACCOUNTS.

23. ARE PERISHABLE TOOLS AND MANUFACTURING SUPPLIES CHARGED DIRECTLY TO CONTRACT COSTS OR INCLUDED IN INDIRECT EXPENSES?

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1439 REV. 7-89 PAGE 3

24. HAVE ANY CHARGES FOR SEVERANCE, DISMISSAL, OR SEPARATION PAY BEEN INCLUDED IN THIS PROPOSAL? (If "Yes," furnish brief explanation and estimates of amounts included.)
☐ YES ☐ NO

25. STATE POLICIES RELATING TO RECORDING OF OVERTIME, SHIFT PREMIUMS AND PRODUCTION BONUSES.

26. DOES CONTRACTOR HAVE A PENSION PLAN? (If "Yes," state method of funding and absorption of past and current pension service costs.)
☐ YES ☐ NO

27. IS THIS SETTLEMENT PROPOSAL BASED ON STANDARD COSTS?
☐ YES (If "Yes," has adjustment to actual cost or adjustment for any significant variations been made? ☐ YES ☐ NO (If "NO," explain.
☐ NO

28. DOES THIS PROPOSAL INCLUDE ANY ELEMENT OF PROFIT TO THE CONTRACTOR OR RELATED ORGANIZATION, OTHER THAN (a) PROFIT SET FORTH SEPARATELY IN THE PROPOSAL OR (b) PROFIT INCLUDED IN THE CONTRACT PRICE AT WHICH ACCEPTABLE FINISHED PRODUCT, IF ANY, IS INCLUDED IN THE PROPOSAL? (If "Yes," explain briefly.)
☐ YES ☐ NO

29. WHAT IS LENGTH OF TIME (PRODUCTION CYCLE) REQUIRED TO PRODUCE ONE OF THE END ITEMS FROM THE TIME THE MATERIAL ENTERS THE PRODUCTION LINE TO THE COMPLETION AS THE FINISHED PRODUCT?

30. STATE POLICY AND PROCEDURE FOR VERIFICATION AND NEGOTIATION OF SETTLEMENTS WITH SUBCONTRACTORS AND VENDORS.

CERTIFICATE

THIS CERTIFIES THAT, TO THE BEST KNOWLEDGE AND BELIEF OF THE UNDERSIGNED, THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

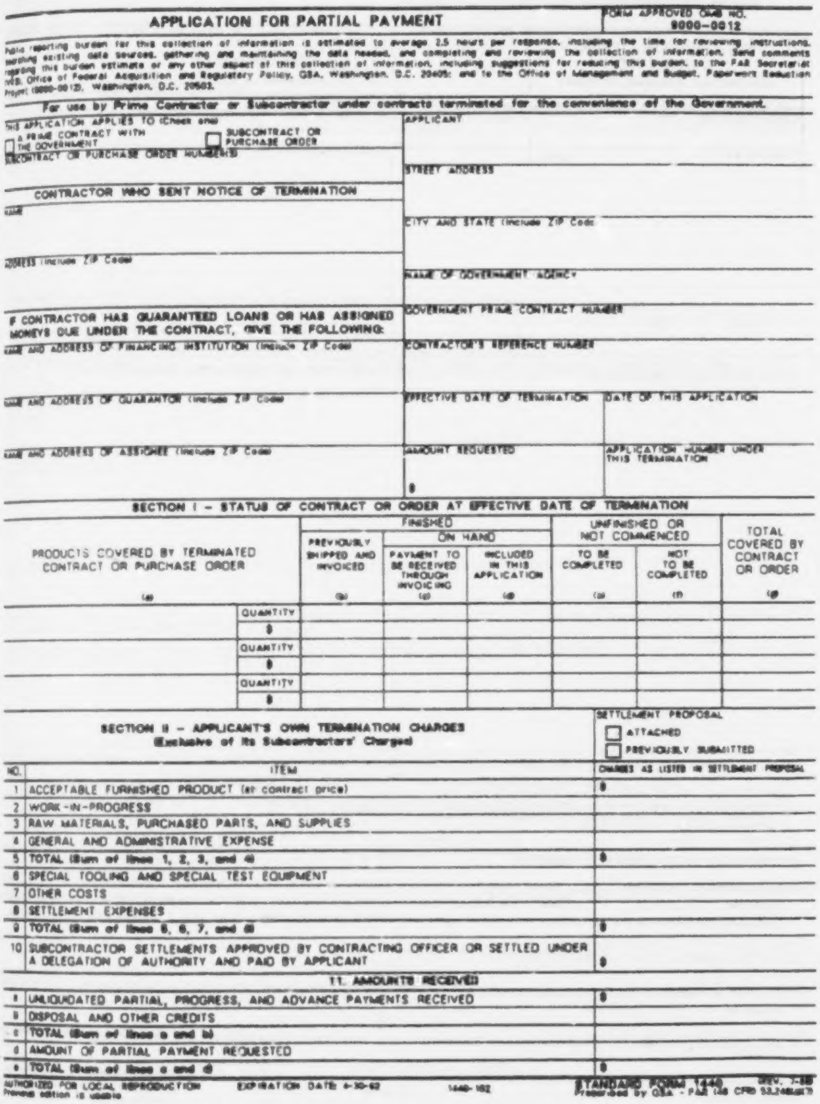
NAME OF CONTRACTOR	BY (Signature of supervisory accounting official)	
	TITLE	DATE

(Where the space provided for any information is insufficient, continue on a separate sheet.)

STANDARD FORM 1439 (REV. 7-89) PAGE 4

[55 FR 3928, Feb. 5, 1990]

53.301-1440 Application for Partial Payment.



APPLICATION FOR PARTIAL PAYMENT	FORM APPROVED OMB NO. 9000-0012

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0012), Washington, D.C. 20503.

For use by Prime Contractor or Subcontractor under contracts terminated for the convenience of the Government.

THIS APPLICATION APPLIES TO (Check one) ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER	APPLICANT	
SUBCONTRACT OR PURCHASE ORDER NUMBER(S)	STREET ADDRESS	
CONTRACTOR WHO SENT NOTICE OF TERMINATION		
NAME	CITY AND STATE (Include ZIP Code)	
ADDRESS (Include ZIP Code)	NAME OF GOVERNMENT AGENCY	
IF CONTRACTOR HAS GUARANTEED LOANS OR HAS ASSIGNED MONEYS DUE UNDER THE CONTRACT, GIVE THE FOLLOWING:	GOVERNMENT PRIME CONTRACT NUMBER	
NAME AND ADDRESS OF FINANCING INSTITUTION (Include ZIP Code)	CONTRACTOR'S REFERENCE NUMBER	
NAME AND ADDRESS OF GUARANTOR (Include ZIP Code)	EFFECTIVE DATE OF TERMINATION	DATE OF THIS APPLICATION
NAME AND ADDRESS OF ASSIGNEE (Include ZIP Code)	AMOUNT REQUESTED $	APPLICATION NUMBER UNDER THIS TERMINATION

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND				
			PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	INCLUDED IN THIS APPLICATION (d)	TO BE COMPLETED (e)	NOT TO BE COMPLETED (f)	
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

	SECTION II – APPLICANT'S OWN TERMINATION CHARGES (Exclusive of its Subcontractors' Charges)	SETTLEMENT PROPOSAL ☐ ATTACHED ☐ PREVIOUSLY SUBMITTED
NO.	ITEM	CHARGES AS LISTED IN SETTLEMENT PROPOSAL
1	ACCEPTABLE FURNISHED PRODUCT (at contract price)	$
2	WORK-IN-PROGRESS	
3	RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES	
4	GENERAL AND ADMINISTRATIVE EXPENSE	
5	TOTAL (Sum of lines 1, 2, 3, and 4)	$
6	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT	
7	OTHER COSTS	
8	SETTLEMENT EXPENSES	
9	TOTAL (Sum of lines 5, 6, 7, and 8)	$
10	SUBCONTRACTOR SETTLEMENTS APPROVED BY CONTRACTING OFFICER OR SETTLED UNDER A DELEGATION OF AUTHORITY AND PAID BY APPLICANT	$
	11. AMOUNTS RECEIVED	
a	UNLIQUIDATED PARTIAL, PROGRESS, AND ADVANCE PAYMENTS RECEIVED	$
b	DISPOSAL AND OTHER CREDITS	
c	TOTAL (Sum of lines a and b)	
d	AMOUNT OF PARTIAL PAYMENT REQUESTED	
e	TOTAL (Sum of lines c and d)	$

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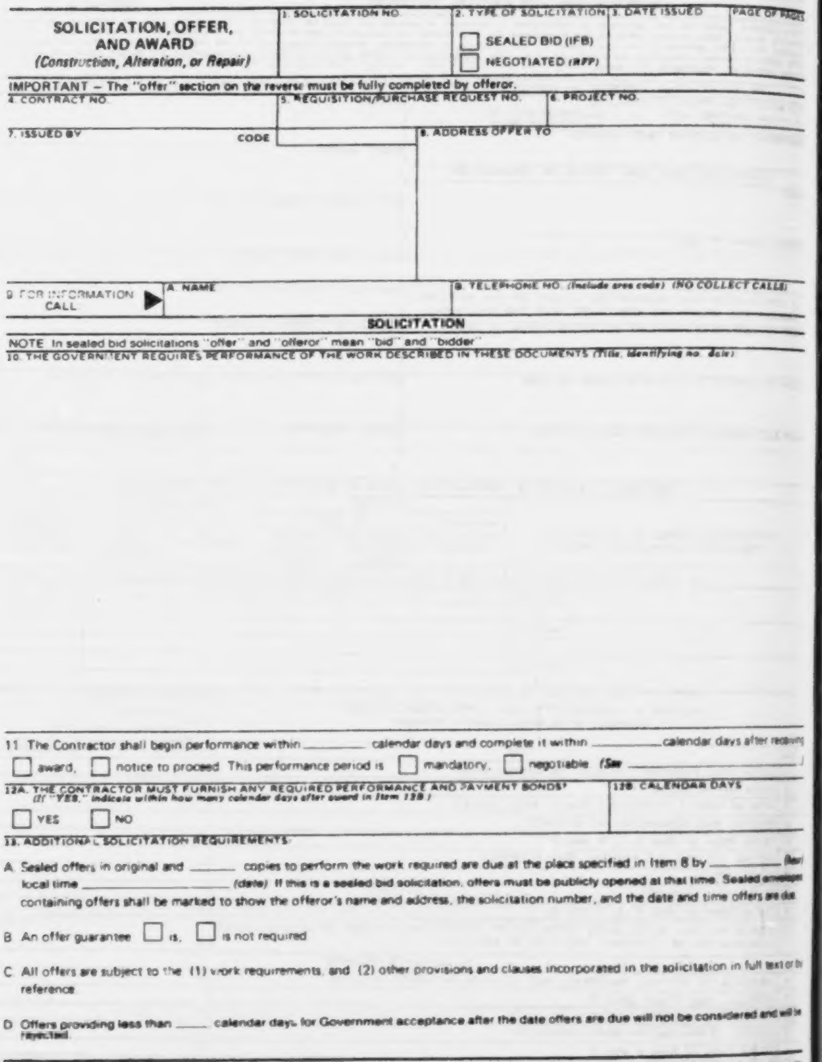
1440-102
STANDARD FORM 1440 (REV. 7-89)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(7)

[55 FR 3933, Feb. 5, 1990]

53.301-1442 Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).



SOLICITATION, OFFER, AND AWARD *(Construction, Alteration, or Repair)*	1. SOLICITATION NO.	2. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED *(RFP)*	3. DATE ISSUED	PAGE OF PAGES

IMPORTANT – The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.

7. ISSUED BY	CODE	8. ADDRESS OFFER TO

9. FOR INFORMATION CALL ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

SOLICITATION

NOTE In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS *(Title, identifying no. date)*

11 The Contractor shall begin performance within ________ calendar days and complete it within ________ calendar days after receiv
☐ award, ☐ notice to proceed. This performance period is ☐ mandatory, ☐ negotiable *(See* ________________ .)

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? *(If "YES," indicate within how many calendar days after award in Item 12B.)* ☐ YES ☐ NO	12B. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and ______ copies to perform the work required are due at the place specified in Item 8 by __________ (hou local time ________________ *(date)*. If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelop containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are du

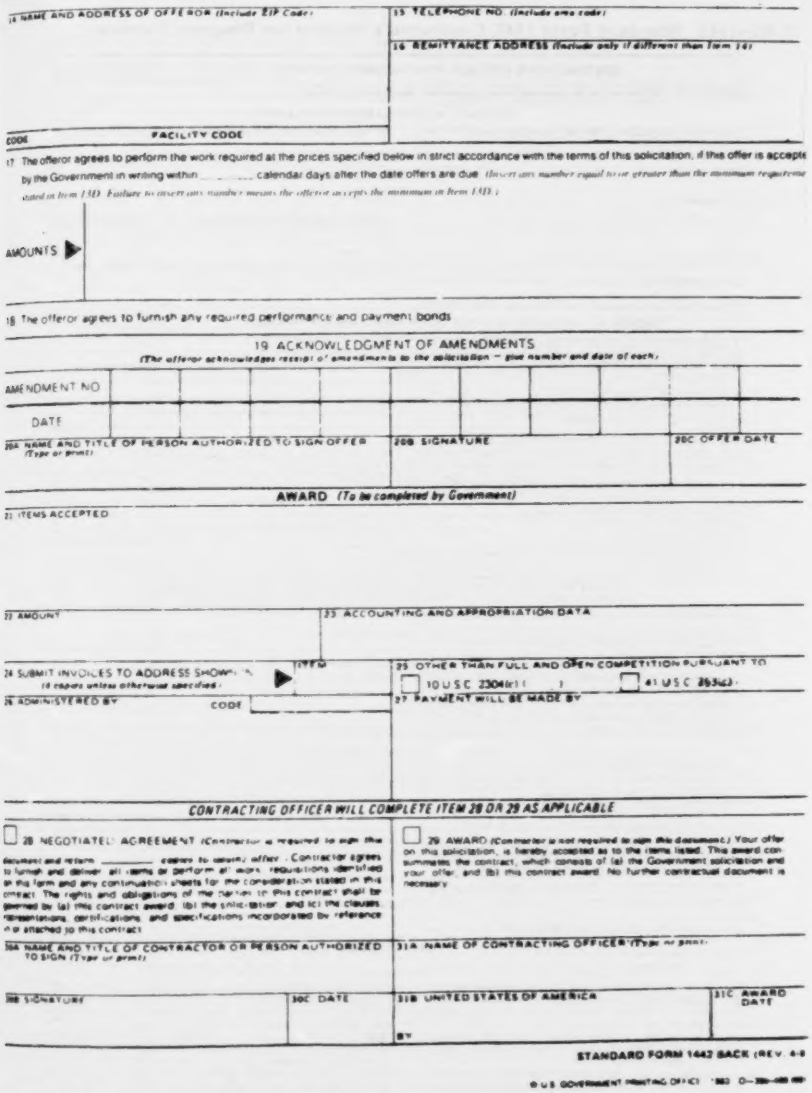
B. An offer guarantee ☐ is, ☐ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or b reference.

D. Offers providing less than _____ calendar days for Government acceptance after the date offers are due will not be considered and will b rejected.

NSN 7540-01-155-3212 1442-101 **STANDARD FORM 1442** (REV. 4-8
Prescribed by GSA
FAR (48 CFR) 53.236-1(d)

53-146



14 NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*

15 TELEPHONE NO. *(Include area code)*

16 REMITTANCE ADDRESS *(Include only if different than Item 14)*

CODE FACILITY CODE

17 The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepte by the Government in writing within ________ calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requireme stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS ▶

18 The offeror agrees to furnish any required performance and payment bonds

19 ACKNOWLEDGMENT OF AMENDMENTS
(The offeror acknowledges receipt of amendments to the solicitation — give number and date of each)

AMENDMENT NO										
DATE										

20A NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

20B SIGNATURE

20C OFFER DATE

AWARD *(To be completed by Government)*

21 ITEMS ACCEPTED

22 AMOUNT

23 ACCOUNTING AND APPROPRIATION DATA

24 SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)* ▶ ITEM

25 OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

26 ADMINISTERED BY CODE

27 PAYMENT WILL BE MADE BY

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28 NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return ________ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29 AWARD *(Contractor is not required to sign this document.)* Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN *(Type or print)*

31A NAME OF CONTRACTING OFFICER *(Type or print)*

30B SIGNATURE

30C DATE

31B UNITED STATES OF AMERICA
BY

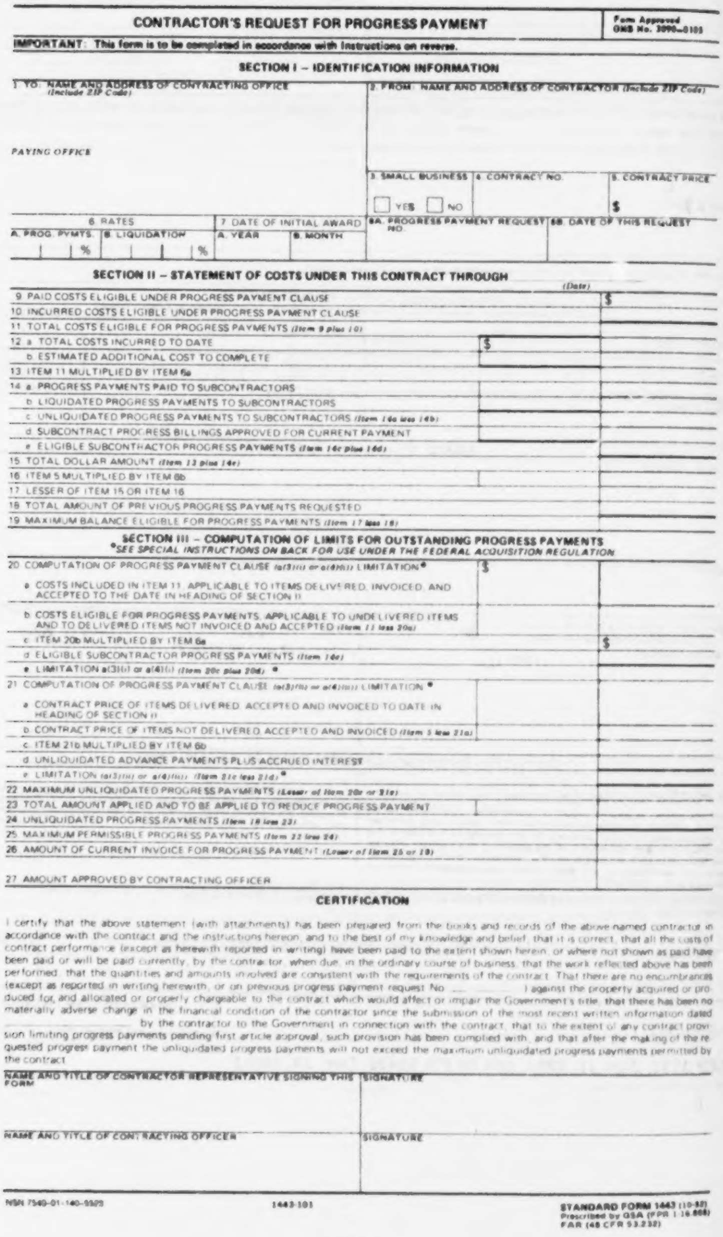
31C AWARD DATE

STANDARD FORM 1442 BACK (REV. 4-8

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985 O—[illegible]

[50 FR 1752, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

53.301-1443 Standard Form 1443, Contractor's Request for Progress Payment.



CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT

Form Approved
OMB No. 3090-0105

IMPORTANT: This form is to be completed in accordance with Instructions on reverse.

SECTION I – IDENTIFICATION INFORMATION

1. TO: NAME AND ADDRESS OF CONTRACTING OFFICE *(Include ZIP Code)* *PAYING OFFICE*	2. FROM: NAME AND ADDRESS OF CONTRACTOR *(Include ZIP Code)*		
	3. SMALL BUSINESS ☐ YES ☐ NO	4. CONTRACT NO.	5. CONTRACT PRICE $

6. RATES		7. DATE OF INITIAL AWARD		8A. PROGRESS PAYMENT REQUEST NO.	8B. DATE OF THIS REQUEST
A. PROG. PYMTS.	B. LIQUIDATION	A. YEAR	B. MONTH		
%	%				

SECTION II – STATEMENT OF COSTS UNDER THIS CONTRACT THROUGH ______ *(Date)*

9 PAID COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE		$
10 INCURRED COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE		
11 TOTAL COSTS ELIGIBLE FOR PROGRESS PAYMENTS *(Item 9 plus 10)*		
12 a TOTAL COSTS INCURRED TO DATE	$	
b ESTIMATED ADDITIONAL COST TO COMPLETE		
13 ITEM 11 MULTIPLIED BY ITEM 6a		
14 a PROGRESS PAYMENTS PAID TO SUBCONTRACTORS		
b LIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS		
c UNLIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS *(Item 14a less 14b)*		
d SUBCONTRACT PROGRESS BILLINGS APPROVED FOR CURRENT PAYMENT		
e ELIGIBLE SUBCONTRACTOR PROGRESS PAYMENTS *(Item 14c plus 14d)*		
15 TOTAL DOLLAR AMOUNT *(Item 13 plus 14e)*		
16 ITEM 5 MULTIPLIED BY ITEM 6b		
17 LESSER OF ITEM 15 OR ITEM 16		
18 TOTAL AMOUNT OF PREVIOUS PROGRESS PAYMENTS REQUESTED		
19 MAXIMUM BALANCE ELIGIBLE FOR PROGRESS PAYMENTS *(Item 17 less 18)*		

SECTION III – COMPUTATION OF LIMITS FOR OUTSTANDING PROGRESS PAYMENTS
**SEE SPECIAL INSTRUCTIONS ON BACK FOR USE UNDER THE FEDERAL ACQUISITION REGULATION*

20 COMPUTATION OF PROGRESS PAYMENT CLAUSE *(a(3)(i) or a(4)(i))* LIMITATION*	$	
a COSTS INCLUDED IN ITEM 11, APPLICABLE TO ITEMS DELIVERED, INVOICED, AND ACCEPTED TO THE DATE IN HEADING OF SECTION II		
b COSTS ELIGIBLE FOR PROGRESS PAYMENTS, APPLICABLE TO UNDELIVERED ITEMS AND TO DELIVERED ITEMS NOT INVOICED AND ACCEPTED *(Item 11 less 20a)*		
c ITEM 20b MULTIPLIED BY ITEM 6a		$
d ELIGIBLE SUBCONTRACTOR PROGRESS PAYMENTS *(Item 14e)*		
e LIMITATION a(3)(i) or a(4)(i) *(Item 20c plus 20d)* *		
21 COMPUTATION OF PROGRESS PAYMENT CLAUSE *(a(3)(ii) or a(4)(ii))* LIMITATION *		
a CONTRACT PRICE OF ITEMS DELIVERED, ACCEPTED AND INVOICED TO DATE IN HEADING OF SECTION II		
b CONTRACT PRICE OF ITEMS NOT DELIVERED, ACCEPTED AND INVOICED *(Item 5 less 21a)*		
c ITEM 21b MULTIPLIED BY ITEM 6b		
d UNLIQUIDATED ADVANCE PAYMENTS PLUS ACCRUED INTEREST		
e LIMITATION *(a(3)(ii) or a(4)(ii))* *(Item 21c less 21d)**		
22 MAXIMUM UNLIQUIDATED PROGRESS PAYMENTS *(Lesser of Item 20e or 21e)*		
23 TOTAL AMOUNT APPLIED AND TO BE APPLIED TO REDUCE PROGRESS PAYMENT		
24 UNLIQUIDATED PROGRESS PAYMENTS *(Item 18 less 23)*		
25 MAXIMUM PERMISSIBLE PROGRESS PAYMENTS *(Item 22 less 24)*		
26 AMOUNT OF CURRENT INVOICE FOR PROGRESS PAYMENT *(Lesser of Item 25 or 19)*		
27 AMOUNT APPROVED BY CONTRACTING OFFICER		

CERTIFICATION

I certify that the above statement (with attachments) has been prepared from the books and records of the above-named contractor in accordance with the contract and the instructions hereon, and to the best of my knowledge and belief, that it is correct, that all the costs of contract performance (except as herewith reported in writing) have been paid to the extent shown herein, or where not shown as paid have been paid or will be paid currently, by the contractor, when due, in the ordinary course of business, that the work reflected above has been performed, that the quantities and amounts involved are consistent with the requirements of the contract. That there are no encumbrances (except as reported in writing herewith, or on previous progress payment request No. ______) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title, that there has been no materially adverse change in the financial condition of the contractor since the submission of the most recent written information dated ______ by the contractor to the Government in connection with the contract, that to the extent of any contract provision limiting progress payments pending first article approval, such provision has been complied with, and that after the making of the requested progress payment the unliquidated progress payments will not exceed the maximum unliquidated progress payments permitted by the contract.

NAME AND TITLE OF CONTRACTOR REPRESENTATIVE SIGNING THIS FORM	SIGNATURE
NAME AND TITLE OF CONTRACTING OFFICER	SIGNATURE

NSN 7540-01-140-5529 1443-101

STANDARD FORM 1443 (10-82)
Prescribed by GSA (FPR 1-16.808)
FAR (48 CFR 53.232)

INSTRUCTIONS

GENERAL- All entries on this form must be typewritten; all dollar amounts must be shown in whole dollars, rounded up to the next whole dollar. All line item numbers not included in the instructions below are self-explanatory.

SECTION I – IDENTIFICATION INFORMATION. Complete Items 1 through 8c in accordance with the following instructions.

Item 1. TO – Enter the name and address of the cognizant Contract Administration Office. PAYING OFFICE – Enter the designation of the paying office, as indicated in the contract.

Item 2. FROM – CONTRACTOR'S NAME AND ADDRESS/ZIP CODE – Enter the name and mailing address of the contractor. If applicable, the division of the company performing the contract should be entered immediately following the contractor's name.

Item 3. Enter an "X" in the appropriate block to indicate whether or not the contractor is a small business concern.

Item 5. Enter the total contract price, as amended. If the contract provides for escalation or price redetermination, enter the initial price until changed and not the ceiling price; if the contract is of the incentive type, enter the target or billing price, as amended until final pricing. For letter contracts, enter the maximum expenditure authorized by the contract, as amended.

Item 6A. PROGRESS PAYMENT RATES – Enter the 2-digit progress payment percentage rate shown in paragraph (a)(1) of the progress payment clause.

Item 6B. LIQUIDATION RATE – Enter the progress payment liquidation rate shown in paragraph (b) of the progress payment clause, using three digits. Example: show 80% as 800; show 72.3% as 723.

Item 7. DATE OF INITIAL AWARD – Enter the last two digits of the calendar year. Use two digits to indicate the month. Example: show Janaury 1982 as 82/01.

Item 8A. PROGRESS PAYMENT REQUEST NO. – Enter the number assigned to this request. All requests under a single contract must be numbered consecutively, beginning with 1. Each subsequent request under the same contract must continue in sequence, using the same series of numbers without omission.

Item 8B. Enter the date of the request.

SECTION II – GENERAL INSTRUCTIONS. DATE. In the space provided in the heading enter the date through which costs have been accumulated from inception for inclusion in this request. This date is applicable to item entries in Sections II and III.

Cost Basis. For all contracts with Small Business concerns, the base for progress payments is total costs incurred. For contracts with concerns other than Small Business, the progress payment base will be the total recorded paid costs, together with the incurred costs per the Computation of Amounts paragraph of the progress payment clause in FPR 1-30 510-1(a) or FAR 52 232-16, as appropriate. Total costs include all expenses paid and incurred, including applicable manufacturing and production expense, general and administrative expense for performance of contract, which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and which are not otherwise excluded by the contract.

Manufacturing and Production Expense, General and Administrative Expense. In connection with the first progress payment request on a contract, attach an explanation of the method, bases and period used in determining the amount of each of these two types of expenses. If the method, bases or periods used for computing these expenses differ in subsequent requests for progress payments under this contract, attach an explanation of such changes to the progress payment request involved.

Incurred Costs Involving Subcontractors for Contracts with Small Business Concerns. If the incurred costs eligible for progress payments under the contract include costs shown in invoices of subcontractors, suppliers and others, that portion of the costs computed on such invoices can only include costs for: (1) completed work to which the prime contractor has acquired title; (2) materials delivered to which the prime contractor has acquired title; (3) services rendered; and (4) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title.

SECTION II – SPECIFIC INSTRUCTIONS

Item 9. PAID COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE – Line 9 will not be used for Small Business Contracts.

For large business contracts, costs to be shown in Item 9 shall include only those recorded costs which have resulted at time of request in payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract. This includes items delivered, accepted and paid for, resulting in liquidation of subcontractor progress payments.

Costs to be shown in Item 9 are not to include advance payments, downpayments, or deposits, all of which are not eligible for reimbursement, or progress payments made to subcontractors, suppliers or others, which are to be included in Item 14. See "Cost Basis" above.

Item 10. INCURRED COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE – For all Small Business Contracts, Item 10 will show total costs incurred for the contract.

Costs to be shown in Item 10 are not to include advance payments, downpayments, deposits, or progress payments made to subcontractors, suppliers or others.

For large business contracts, costs to be shown in Item 10 shall include all costs incurred (see "Cost Basis" above) for materials which have been issued from the stores inventory and placed into production process for use on the contract, for direct labor, for other direct in-house costs, and for properly allocated and allowable indirect costs as set forth under "Cost Basis" above.

Item 12a. Enter the total contract costs incurred to date; if the actual amount is not known, enter the best possible estimate. If an estimate is used, enter (E) after the amount.

Item 12b. Enter the estimated cost to complete the contract. The estimate may be the last estimate made, adjusted for costs incurred since the last estimate; however, estimates shall be made not less frequently than every six months.

Items 14a through 14e. Include only progress payments on subcontracts which conform to progress payment provisions of the prime contract.

Item 14a. Enter only progress payments actually paid.

Item 14b. Enter total progress payments recouped from subcontractors.

Item 14d. For Small Business prime contracts, include the amount of unpaid subcontract progress payment billings which have been approved by the contractor for the current payment in the ordinary course of business. For other contracts, enter "0" amount.

SECTION III – SPECIFIC INSTRUCTIONS. This Section must be completed only if the contractor has received advance payments against this contract, or if items have been delivered, invoiced and accepted as of the date indicated in the heading of Section II above. EXCEPTION: Item 27 must be filled in by the Contracting Officer.

Item 20a. Of the costs reported in Item 11, compute and enter only costs which are properly allocable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the following: (a) The actual unit cost of items delivered, giving proper consideration to the deferment of the starting load costs or, (b) projected unit costs (based on experienced costs plus the estimated cost to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates.

Item 20d. Enter amount from 14e.

Item 21a. Enter the total billing price, as adjusted, of items delivered, accepted and invoiced to the applicable date.

Item 23. Enter total progress payments liquidated and those to be liquidated from billings submitted but not yet paid.

Item 25. Self-explanatory. (NOTE: If the entry in this item is a negative amount, there has been an overpayment which requires adjustment.)

Item 26. Self-explanatory, but if a lesser amount is requested, enter the lesser amount.

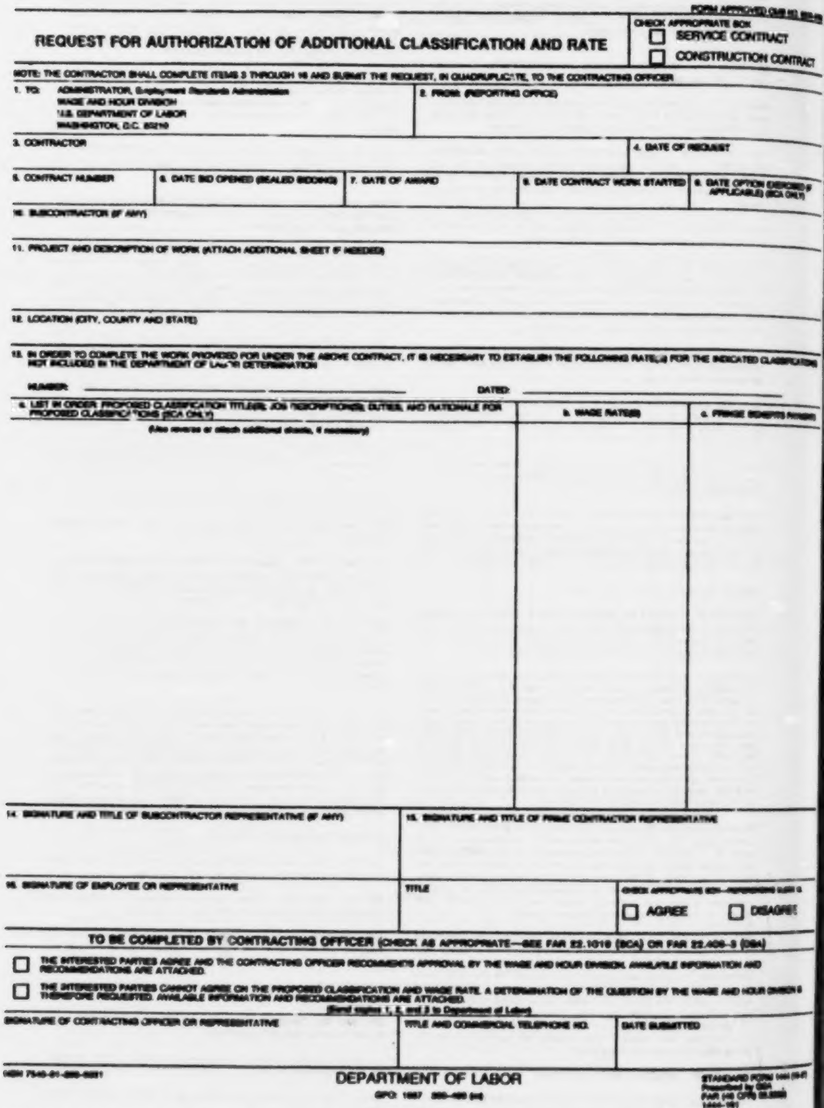
SPECIAL INSTRUCTIONS FOR USE UNDER FEDERAL ACQUISITION REGULATION (FAR).

Items 20 and 20e. Delete the references to a(3)(i) of the progress payment clause.

Items 21 and 21e. Delete the references to a(3)(ii) of the progress payment clause.

STANDARD FORM 1443 BACK (10-82)

53.301-1444 Request for Authorization of Additional Classification and Rate.



REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
☐ SERVICE CONTRACT
☐ CONSTRUCTION CONTRACT

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER

1. TO: ADMINISTRATOR, Employment Standards Administration
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

2. FROM: (REPORTING OFFICE)

3. CONTRACTOR

4. DATE OF REQUEST

5. CONTRACT NUMBER

6. DATE BID OPENED (SEALED BIDDING)

7. DATE OF AWARD

8. DATE CONTRACT WORK STARTED

9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: ______________________ DATED: ______________________

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S), JOB DESCRIPTION(S), DUTIES, AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) (Use reverse or attach additional sheets, if necessary)	b. WAGE RATE(S)	c. FRINGE BENEFITS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)

15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE

TITLE

CHECK APPROPRIATE BOX
☐ AGREE ☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE—SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE

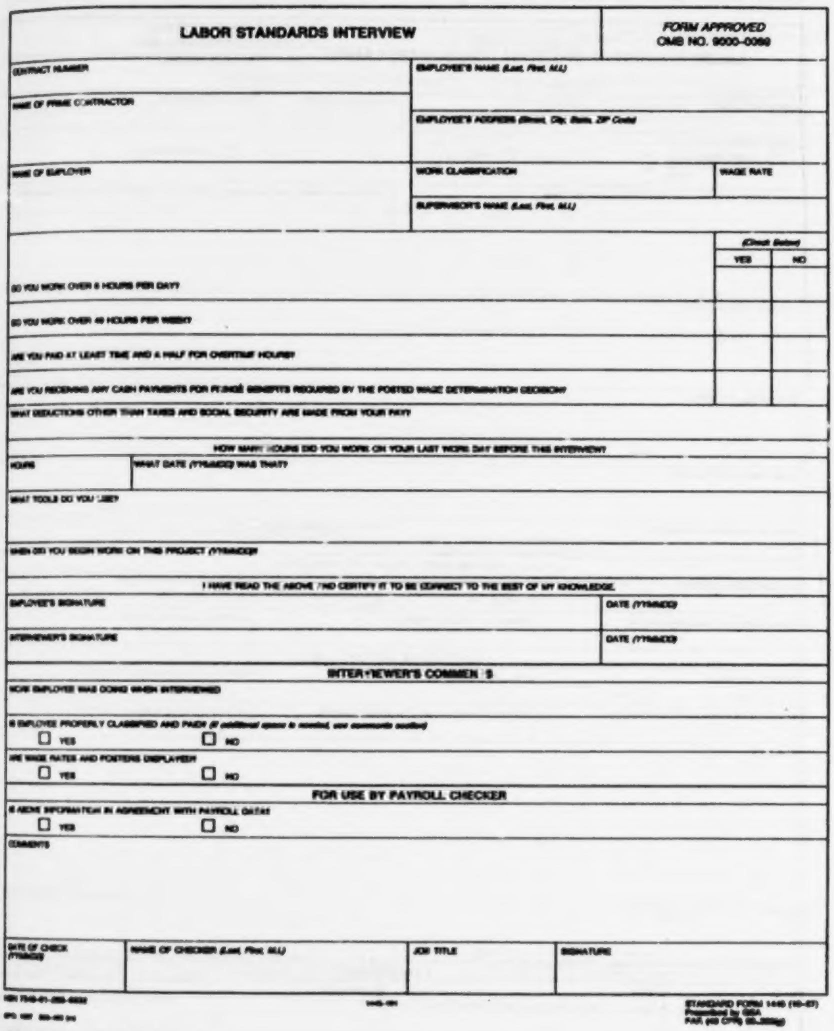
TITLE AND COMMERCIAL TELEPHONE NO.

DATE SUBMITTED

DEPARTMENT OF LABOR

[53 FR 4949, Feb. 18, 1988]

53.301-1445 Labor Standards Interview.



LABOR STANDARDS INTERVIEW

FORM APPROVED
OMB NO. 9000-0066

CONTRACT NUMBER

EMPLOYEE'S NAME *(Last, First, M.I.)*

NAME OF PRIME CONTRACTOR

EMPLOYEE'S ADDRESS *(Street, City, State, ZIP Code)*

NAME OF EMPLOYER

WORK CLASSIFICATION

WAGE RATE

SUPERVISOR'S NAME *(Last, First, M.I.)*

	(Check Below)	
	YES	NO
DO YOU WORK OVER 8 HOURS PER DAY?		
DO YOU WORK OVER 40 HOURS PER WEEK?		
ARE YOU PAID AT LEAST TIME AND A HALF FOR OVERTIME HOURS?		
ARE YOU RECEIVING ANY CASH PAYMENTS FOR FRINGE BENEFITS REQUIRED BY THE POSTED WAGE DETERMINATION DECISION?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?

HOURS

WHAT DATE *(YYMMDD)* WAS THAT?

WHAT TOOLS DO YOU USE?

WHEN DID YOU BEGIN WORK ON THIS PROJECT *(YYMMDD)*?

I HAVE READ THE ABOVE AND CERTIFY IT TO BE CORRECT TO THE BEST OF MY KNOWLEDGE.

EMPLOYEE'S SIGNATURE

DATE *(YYMMDD)*

INTERVIEWER'S SIGNATURE

DATE *(YYMMDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED

IS EMPLOYEE PROPERLY CLASSIFIED AND PAID? *(If additional space is needed, use comments section)*

☐ YES ☐ NO

ARE WAGE RATES AND POSTERS DISPLAYED?

☐ YES ☐ NO

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

DATE OF CHECK *(YYMMDD)*	NAME OF CHECKER *(Last, First, M.I.)*	JOB TITLE	SIGNATURE

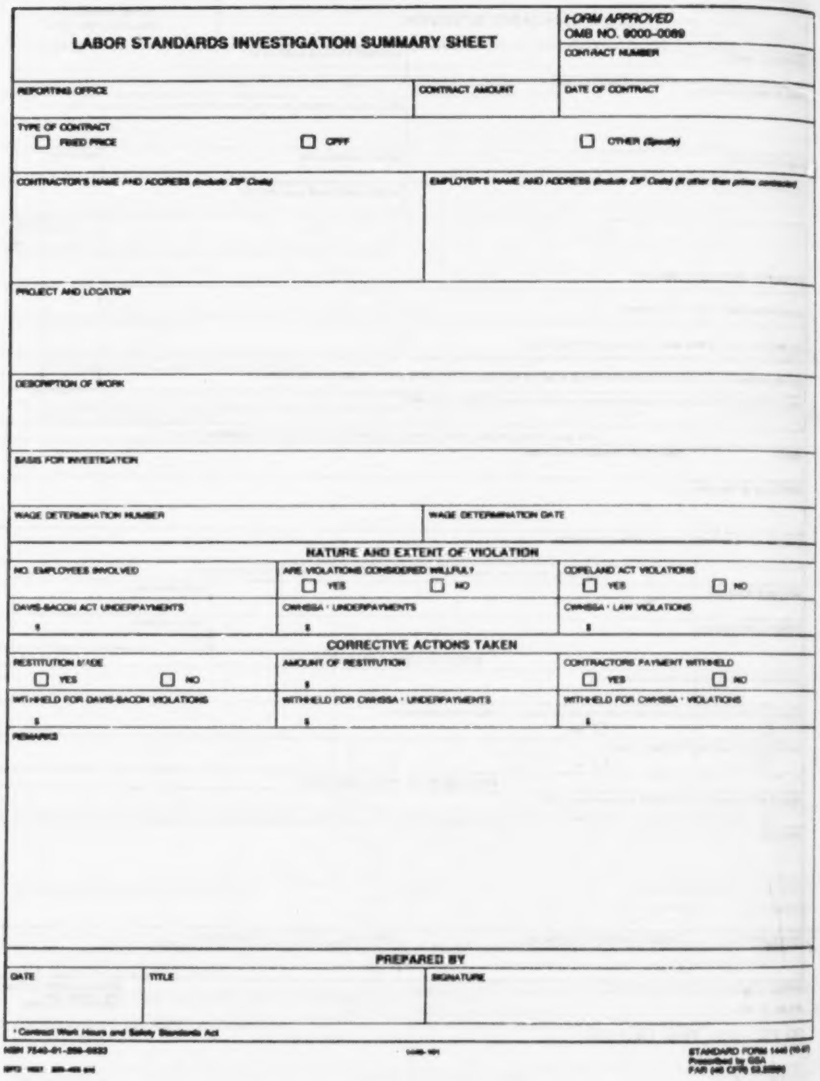
NSN [illegible]

[illegible]

STANDARD FORM 1445 (10-87)
Prescribed by GSA
FAR (48 CFR) 53.222(g)

[53 FR 4950, Feb. 18, 1988]

53.301-1446 Labor Standards Investigation Summary Sheet.



LABOR STANDARDS INVESTIGATION SUMMARY SHEET

FORM APPROVED
OMB NO. 9000-0089

CONTRACT NUMBER

REPORTING OFFICE

CONTRACT AMOUNT

DATE OF CONTRACT

TYPE OF CONTRACT
☐ FIXED PRICE ☐ CPFF ☐ OTHER *(Specify)*

CONTRACTOR'S NAME AND ADDRESS *(Include ZIP Code)*

EMPLOYER'S NAME AND ADDRESS *(Include ZIP Code) (If other than prime contractor)*

PROJECT AND LOCATION

DESCRIPTION OF WORK

BASIS FOR INVESTIGATION

WAGE DETERMINATION NUMBER

WAGE DETERMINATION DATE

NATURE AND EXTENT OF VIOLATION

NO. EMPLOYEES INVOLVED

ARE VIOLATIONS CONSIDERED WILLFUL?
☐ YES ☐ NO

COPELAND ACT VIOLATIONS
☐ YES ☐ NO

DAVIS-BACON ACT UNDERPAYMENTS
$

CWHSSA * UNDERPAYMENTS
$

CWHSSA * LAW VIOLATIONS
$

CORRECTIVE ACTIONS TAKEN

RESTITUTION MADE
☐ YES ☐ NO

AMOUNT OF RESTITUTION
$

CONTRACTORS PAYMENT WITHHELD
☐ YES ☐ NO

WITHHELD FOR DAVIS-BACON VIOLATIONS
$

WITHHELD FOR CWHSSA * UNDERPAYMENTS
$

WITHHELD FOR CWHSSA * VIOLATIONS
$

REMARKS

PREPARED BY

DATE

TITLE

SIGNATURE

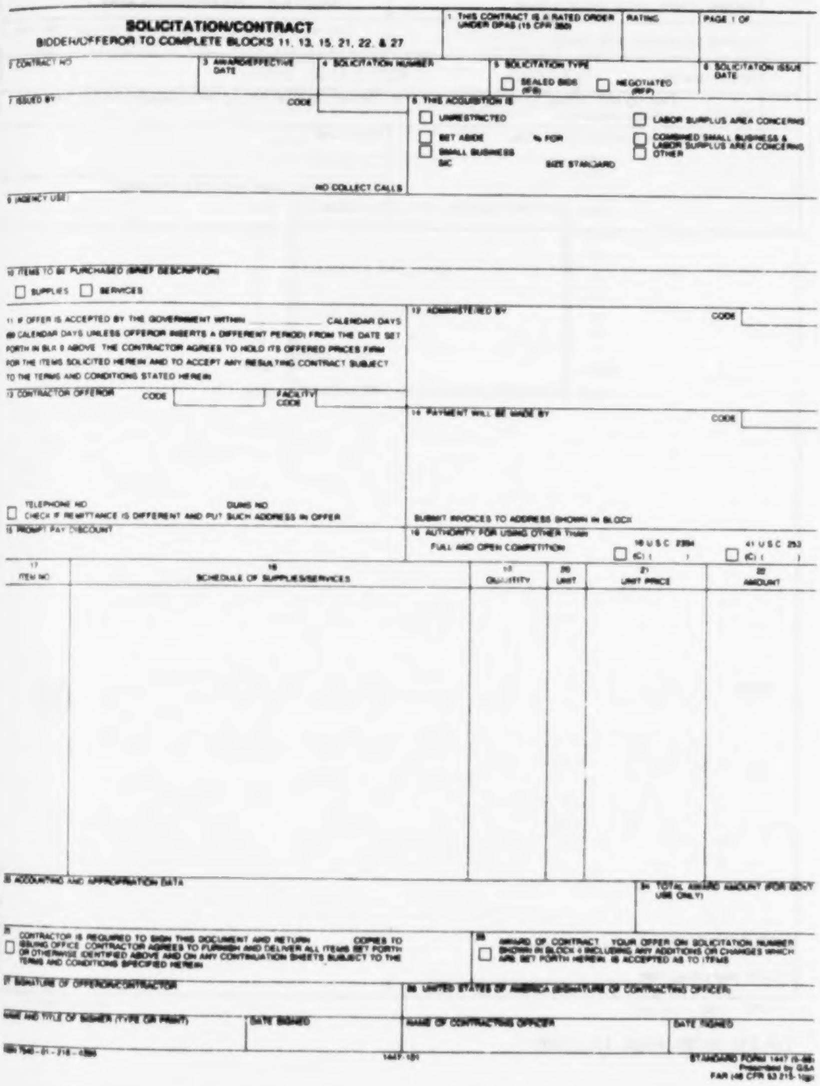
* Contract Work Hours and Safety Standards Act

NSN 7540-01-[illegible]
[illegible]
[illegible]

STANDARD FORM 1446 (10-87)
Prescribed by GSA
FAR (48 CFR) [illegible]

[53 FR 4951, Feb. 18, 1988]

53.301-1447 Solicitation/Contract.



SOLICITATION/CONTRACT
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27

1 THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)
RATING
PAGE 1 OF

2 CONTRACT NO
3 AWARD/EFFECTIVE DATE
4 SOLICITATION NUMBER
5 SOLICITATION TYPE ☐ SEALED BIDS (IFB) ☐ NEGOTIATED (RFP)
6 SOLICITATION ISSUE DATE

7 ISSUED BY CODE
NO COLLECT CALLS

8 THIS ACQUISITION IS
☐ UNRESTRICTED
☐ SET ASIDE % FOR
☐ SMALL BUSINESS
SIC SIZE STANDARD
☐ LABOR SURPLUS AREA CONCERNS
☐ COMBINED SMALL BUSINESS & LABOR SURPLUS AREA CONCERNS
☐ OTHER

9 (AGENCY USE)

10 ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)
☐ SUPPLIES ☐ SERVICES

11 IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN ____________ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLK 9 ABOVE THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN

12 ADMINISTERED BY CODE

13 CONTRACTOR OFFEROR CODE FACILITY CODE
TELEPHONE NO DUNS NO
☐ CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

14 PAYMENT WILL BE MADE BY CODE
SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK

15 PROMPT PAY DISCOUNT

16 AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION
☐ 10 U S C 2304 (C) ( )
☐ 41 U S C 253 (C) ( )

17 ITEM NO	18 SCHEDULE OF SUPPLIES/SERVICES	19 QUANTITY	20 UNIT	21 UNIT PRICE	22 AMOUNT

23 ACCOUNTING AND APPROPRIATION DATA
24 TOTAL AWARD AMOUNT (FOR GOVT USE ONLY)

25 ☐ CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN

26 ☐ AWARD OF CONTRACT YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS

27 SIGNATURE OF OFFEROR/CONTRACTOR
NAME AND TITLE OF SIGNER (TYPE OR PRINT)
DATE SIGNED

28 UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
NAME OF CONTRACTING OFFICER
DATE SIGNED

NSN 7540-01-218-4386
1447-101
STANDARD FORM 1447 (5-86)
Prescribed by GSA
FAR (48 CFR 53.215-1(g))

NO RESPONSE FOR REASONS CHECKED			
☐	CANNOT COMPLY WITH SPECIFICATIONS	☐	CANNOT MEET DELIVERY REQUIREMENT
☐	UNABLE TO IDENTIFY THE ITEM(S)	☐	DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
☐	OTHER (Specify)		
☐	WE DO	☐	WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED
NAME AND ADDRESS OF FIRM (Include Zip Code)		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	

FROM

AFFIX
STAMP
HERE

TO

SOLICITATION NO ________________

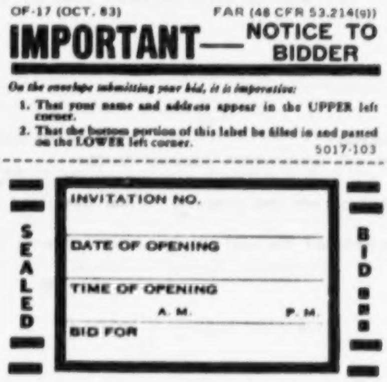
DATE AND LOCAL TIME ______________________

GPO : 1988 - 219-705

SF 1447 (5-88) BACK

[55 FR 38520, Sept. 18, 1990]

53.302-17 **Optional Form 17, Sealed Bid Label.**



OF-17 (OCT. 83) FAR (48 CFR 53.214(g))

IMPORTANT— NOTICE TO BIDDER

On the envelope submitting your bid, it is imperative:

1. That your name and address appear in the UPPER left corner.
2. That the bottom portion of this label be filled in and pasted on the LOWER left corner.

5017-103

SEALED

INVITATION NO.

DATE OF OPENING

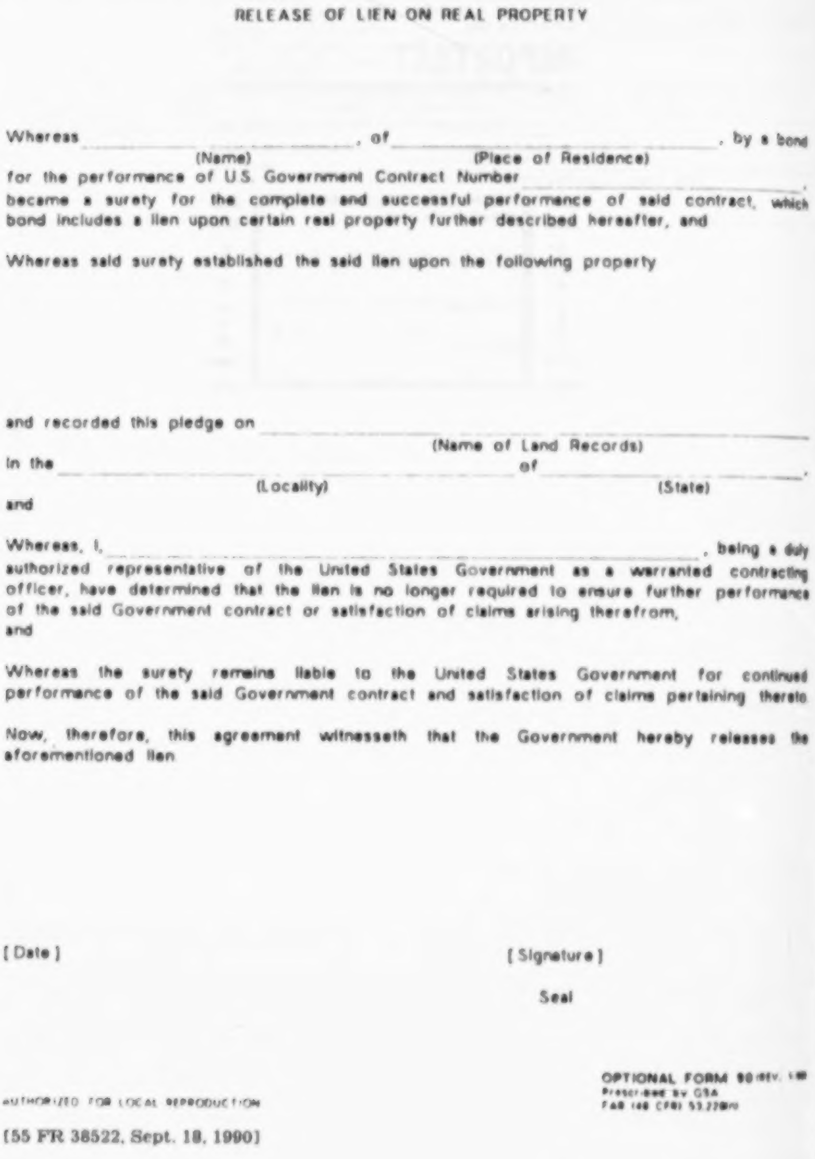
TIME OF OPENING

A. M. P. M.

BID FOR

BID

53.302-90 Release of Lien on Real Property.



RELEASE OF LIEN ON REAL PROPERTY

Whereas ______________________ (Name), of ______________________ (Place of Residence), by a bond for the performance of U.S. Government Contract Number ______________________, became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on ______________________ (Name of Land Records)
in the ______________________ (Locality) of ______________________ (State).
and

Whereas, I, ______________________, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom,
and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Date] [Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 90 (REV. [illegible]
Prescribed by GSA
FAR (48 CFR) 53.228(n)

[55 FR 38522, Sept. 18, 1990]

53.302-91 Release of Personal Property from Escrow.

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas ______________________________, of ______________________________, by a bond
(Name) (Place of Residence)
for the performance of U.S. Government Contract Number ______________________________,
became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

in Account Number ______________________________ on deposit

at ______________________________
(Name of Financial Institution)

located at ______________________________, and
(Address of Financial Institution)

Whereas I, ______________________________, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to ______________________________
(Name of Financial Institution)

[Date]

[Signature]

Seal

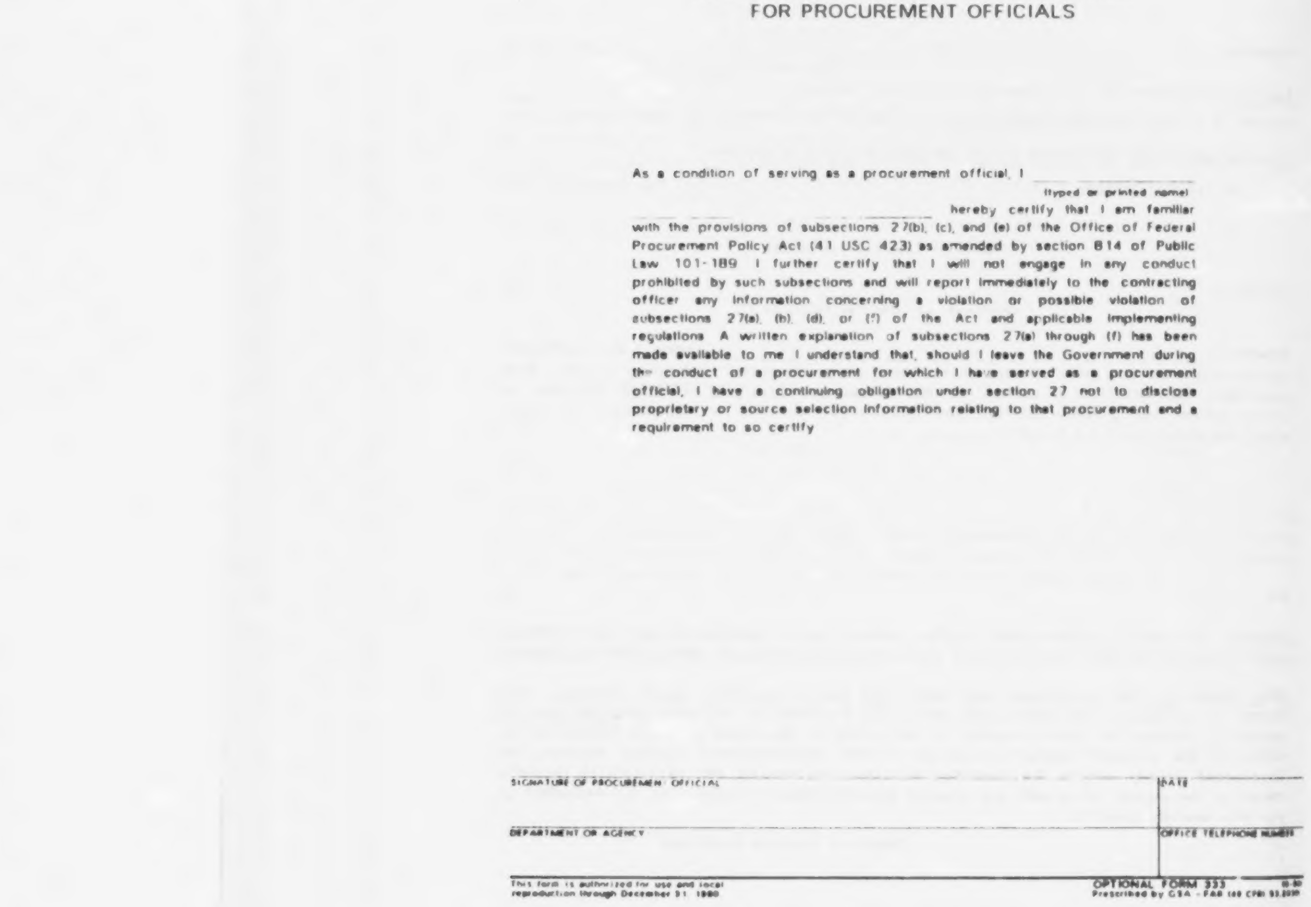
AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 91 (1-90)
Prescribed by GSA
FAR (48 CFR) 53.228(g)

BILLING CODE 6820-34-C

[55 FR 38523, Sept. 18, 1990]

53.302-333 Procurement Integrity Certification for Procurement Officials.



PROCUREMENT INTEGRITY CERTIFICATION
FOR PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I ______________ (typed or printed name) ______________ hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189 I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act and applicable implementing regulations A written explanation of subsections 27(a) through (f) has been made available to me I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify

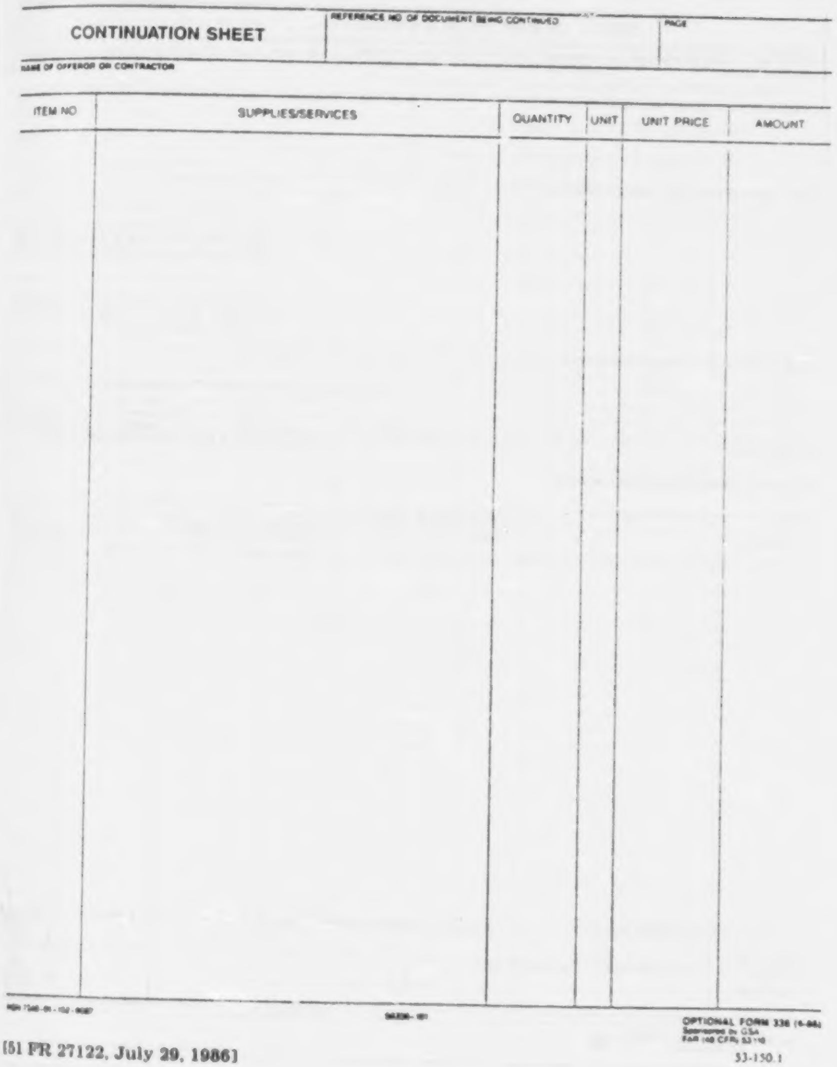
SIGNATURE OF PROCUREMENT OFFICIAL	DATE
DEPARTMENT OR AGENCY	OFFICE TELEPHONE NUMBER

This form is authorized for use and local reproduction through December 31, 1990

OPTIONAL FORM 333 (9-90)
Prescribed by GSA - FAR (48 CFR) 53.203[illegible]

[55 FR 36799, Sept. 6, 1990]

53.302-336 Optional Form 336, Continuation Sheet.



CONTINUATION SHEET

REFERENCE NO OF DOCUMENT BEING CONTINUED

PAGE

NAME OF OFFEROR OR CONTRACTOR

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

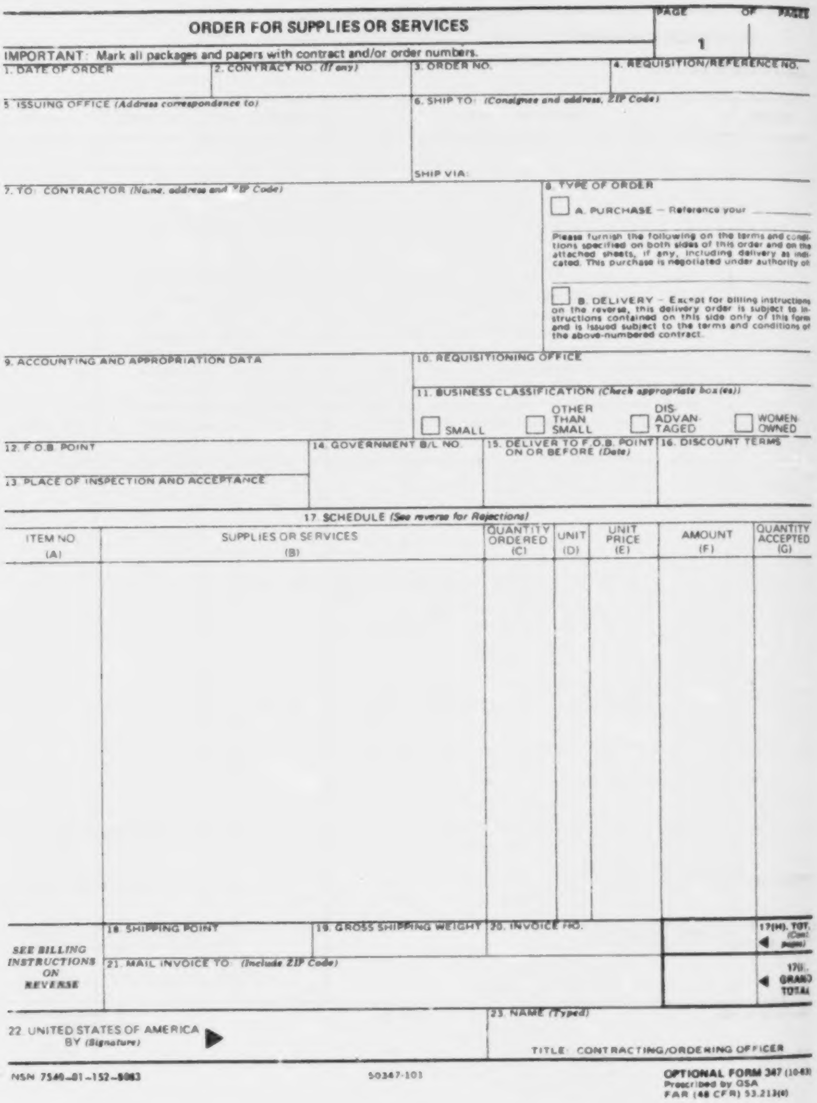
[illegible] [illegible]

OPTIONAL FORM 336 (4-86)
Sponsored by GSA
FAR (48 CFR) 53.110

[51 FR 27122, July 29, 1986]

53-150.1

53.302-347 Optional Form 347, Order for Supplies or Services.



ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER
2. CONTRACT NO. *(If any)*
3. ORDER NO.
4. REQUISITION/REFERENCE NO.
5. ISSUING OFFICE *(Address correspondence to)*
6. SHIP TO: *(Consignee and address, ZIP Code)*

SHIP VIA:

7. TO: CONTRACTOR *(Name, address and ZIP Code)*
8. TYPE OF ORDER

☐ A. PURCHASE — Reference your

Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. This purchase is negotiated under authority of

☐ B. DELIVERY — Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA
10. REQUISITIONING OFFICE
11. BUSINESS CLASSIFICATION *(Check appropriate box(es))*

☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED

12. F.O.B. POINT
13. PLACE OF INSPECTION AND ACCEPTANCE
14. GOVERNMENT B/L NO.
15. DELIVER TO F.O.B. POINT ON OR BEFORE *(Date)*
16. DISCOUNT TERMS

17. SCHEDULE *(See reverse for Rejections)*

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)

SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT
19. GROSS SHIPPING WEIGHT
20. INVOICE NO.

◀ 17(H). TOT. *(Cont. pages)*

21. MAIL INVOICE TO: *(Include ZIP Code)*

◀ 17(I). GRAND TOTAL

22. UNITED STATES OF AMERICA BY *(Signature)* ▶
23. NAME *(Typed)*

TITLE: CONTRACTING/ORDERING OFFICER

NSN 7540-01-152-8083 50347-101

OPTIONAL FORM 347 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.213(e)

PURCHASE ORDER TERMS AND CONDITIONS

52.252-2 CLAUSES INCORPORATED BY REFERENCE (Apr 84)—This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available.

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203-1	Officials Not to Benefit (Apr 84)
52.203-3	Gratuities (Apr 84)
52.203-4	Covenant Against Contingent Fees (Apr 84)
52.212-9	Variation in Quantity (Apr 84) (In the preceding clause, the permissible variations are stated in the schedule)
52.222-3	Convict Labor (Apr 84)
52.222-4	Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Apr 84)
52.222-26	Equal Opportunity (Apr 84)
52.222-36	Affirmative Action for Handicapped Workers (Apr 84)
52.222-40	Service Contract Act of 1965—Contracts of $2500 or Less (Apr 84)
52.222-41	Service Contract Act of 1965 (Apr 84)
52.225-3	Buy American Act—Supplies (Apr 84)
52.232-1	Payments (Apr 84)
52.232-8	Discounts for Prompt Payment (Apr 84) (With Alternate 1)
52.233-1	Disputes (Apr 84)
52.243-1	Changes — Fixed Price (Apr 84)
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form) (Apr 84)

NOTE—If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (signed and dated) is on (or attached to) the order. "Payment is requested in the amount of $________. No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or services, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been ☐ inspected, ☐ accepted, ☐ received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL FINAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T. REP.	DATE
TOTAL CONTAINERS		GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

OPTIONAL FORM 347 BACK (10-83)

53.302-348 Optional Form 348, Order for Supplies or Services Schedule—Continuation.

ORDER FOR SUPPLIES OR SERVICES
SCHEDULE – CONTINUATION

PAGE NO.

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO.	ORDER NO.

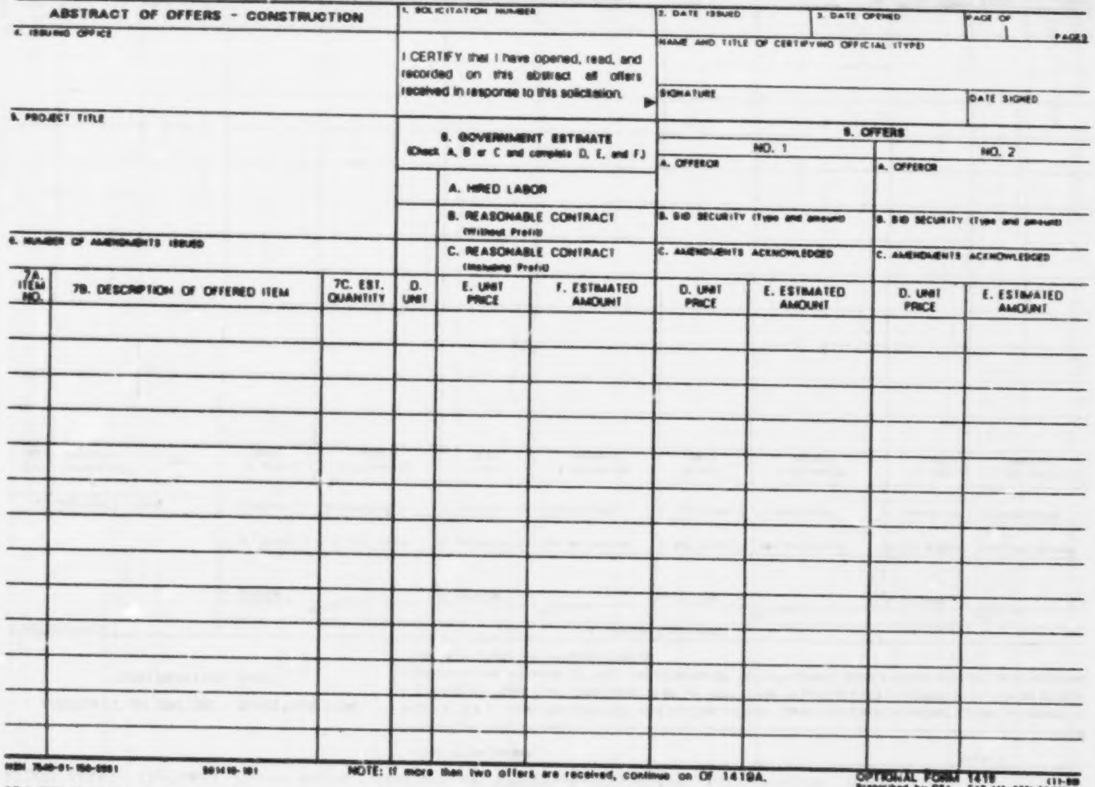
ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
	TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H)) ▶					

NSN 7540-01-152-8082

50348-101

OPTIONAL FORM 348 (10-
Prescribed by GSA
FAR (48 CFR) 53.213(e)

53.302-1419 Optional Form 1419, Abstract of Offers—Construction.



ABSTRACT OF OFFERS - CONSTRUCTION

1. SOLICITATION NUMBER
2. DATE ISSUED
3. DATE OPENED
PAGE OF PAGES
4. ISSUING OFFICE

I CERTIFY that I have opened, read, and recorded on this abstract all offers received in response to this solicitation. ▶

NAME AND TITLE OF CERTIFYING OFFICIAL (TYPE)
SIGNATURE
DATE SIGNED
5. PROJECT TITLE
6. NUMBER OF AMENDMENTS ISSUED

8. GOVERNMENT ESTIMATE (Check A, B or C and complete D, E, and F.)

☐ A. HIRED LABOR

☐ B. REASONABLE CONTRACT (Without Profit)

☐ C. REASONABLE CONTRACT (Including Profit)

9. OFFERS

NO. 1	NO. 2
A. OFFEROR	A. OFFEROR
B. BID SECURITY (Type and amount)	B. BID SECURITY (Type and amount)
C. AMENDMENTS ACKNOWLEDGED	C. AMENDMENTS ACKNOWLEDGED

7A. ITEM NO.	7B. DESCRIPTION OF OFFERED ITEM	7C. EST. QUANTITY	D. UNIT	E. UNIT PRICE	F. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN 7540-01-150-0881 501419-101

NOTE: If more than two offers are received, continue on OF 1419A.

OPTIONAL FORM 1419 (11-89)
Prescribed by GSA - FAR (48 CFR) 53.236-1

[54 FR 29290, July 11, 1989]

53.302-1419A Optional Form 1419A. Abstract of Offers—Construction, Continuation Sheet.

ABSTRACT OF OFFERS - CONSTRUCTION CONTINUATION SHEET

1. SOLICITATION NUMBER

PAGE OF PAGES

INSTRUCTIONS - Attach this form to OF 1419, Abstract of Offers - Construction, when more than 2 offers are received on a construction project. Each Continuation Sheet will accomodate 14 contract items to conform to the number of items which can be entered on the OF 1419. Use additional OF 1419's for contract items in excess of 14 and attach additional Continuation Sheets (OF 1419A) as needed.

2. PROJECT TITLE

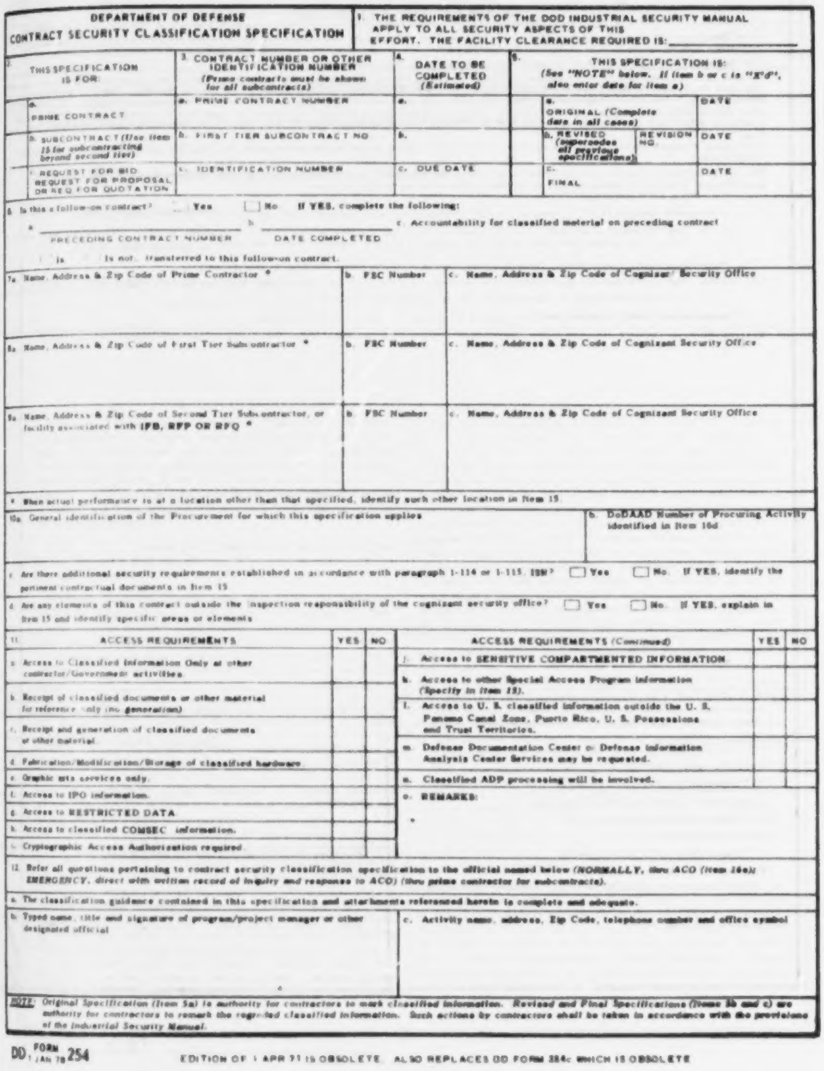
3. CONTRACT ITEMS			4. OFFERS (Continued)							
			NO.:____		NO.:____		NO.:____		NO.:____	
			A. OFFEROR		A. OFFEROR		A. OFFEROR		A. OFFEROR	
			B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)	
			C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED	
A. ITEM NO.	B. ESTIMATED QUANTITY	C. UNIT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN [illegible] [illegible]

OPTIONAL FORM 1419A (11-89)
Prescribed by GSA - FAR (48 CFR) 53.236-1

[54 FR 29292, July 11, 1989]

53.303-DD-254 Department of Defense DD Form 254, Contract Security Classification Specification.



DEPARTMENT OF DEFENSE CONTRACT SECURITY CLASSIFICATION SPECIFICATION	1. THE REQUIREMENTS OF THE DOD INDUSTRIAL SECURITY MANUAL APPLY TO ALL SECURITY ASPECTS OF THIS EFFORT. THE FACILITY CLEARANCE REQUIRED IS: ______

2. THIS SPECIFICATION IS FOR:	3. CONTRACT NUMBER OR OTHER IDENTIFICATION NUMBER *(Prime contracts must be shown for all subcontracts)*	4. DATE TO BE COMPLETED *(Estimated)*	5. THIS SPECIFICATION IS: *(See "NOTE" below. If item b or c is "X'd", also enter date for item a)*		
☐ a. PRIME CONTRACT	a. PRIME CONTRACT NUMBER	a.	☐ a. ORIGINAL *(Complete date in all cases)*		DATE
☐ b. SUBCONTRACT *(Use item 15 for subcontracting beyond second tier)*	b. FIRST TIER SUBCONTRACT NO	b.	☐ b. REVISED *(supersedes all previous specifications)*	REVISION NO.	DATE
☐ c. REQUEST FOR BID REQUEST FOR PROPOSAL OR REQ FOR QUOTATION	c. IDENTIFICATION NUMBER	c. DUE DATE	☐ c. FINAL		DATE

6. Is this a follow-on contract? ☐ Yes ☐ No **If YES, complete the following:**

a. ______ PRECEDING CONTRACT NUMBER b. ______ DATE COMPLETED c. Accountability for classified material on preceding contract ☐ is ☐ is not, transferred to this follow-on contract.

7a. Name, Address & Zip Code of Prime Contractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
8a. Name, Address & Zip Code of First Tier Subcontractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
9a. Name, Address & Zip Code of Second Tier Subcontractor, or facility associated with **IFB, RFP OR RFQ** *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office

* When actual performance is at a location other than that specified, identify such other location in Item 15.

10a. General identification of the Procurement for which this specification applies	b. DoDAAD Number of Procuring Activity identified in Item 16d

c. Are there additional security requirements established in accordance with paragraph 1-114 or 1-115, ISM? ☐ Yes ☐ No. **If YES,** identify the pertinent contractual documents in Item 15

d. Are any elements of this contract outside the inspection responsibility of the cognizant security office? ☐ Yes ☐ No. **If YES,** explain in Item 15 and identify specific areas or elements

11. ACCESS REQUIREMENTS	YES	NO	ACCESS REQUIREMENTS *(Continued)*	YES	NO
a. Access to Classified Information Only at other contractor/Government activities			j. Access to **SENSITIVE COMPARTMENTED INFORMATION**		
b. Receipt of classified documents or other material for reference only (no generation)			k. Access to other Special Access Program information *(Specify in Item 15).*		
c. Receipt and generation of classified documents or other material			l. Access to U. S. classified information outside the U. S. Panama Canal Zone, Puerto Rico, U. S. Possessions and Trust Territories.		
d. Fabrication/Modification/Storage of classified hardware			m. Defense Documentation Center or Defense Information Analysis Center Services may be requested.		
e. Graphic arts services only.			n. Classified ADP processing will be involved.		
f. Access to IPO information.			o. **REMARKS:**		
g. Access to **RESTRICTED DATA**					
h. Access to classified **COMSEC** information.					
i. Cryptographic Access Authorization required					

12. Refer all questions pertaining to contract security classification specification to the official named below *(NORMALLY, thru ACO (item 16e); EMERGENCY, direct with written record of inquiry and response to ACO) (thru prime contractor for subcontracts).*

a. The classification guidance contained in this specification and attachments referenced herein is complete and adequate.

b. Typed name, title and signature of program/project manager or other designated official	c. Activity name, address, Zip Code, telephone number and office symbol

NOTE: *Original Specification (Item 5a) is authority for contractors to mark classified information. Revised and Final Specifications (Items 5b and c) are authority for contractors to remark the regraded classified information. Such actions by contractors shall be taken in accordance with the provisions of the Industrial Security Manual.*

DD FORM 1 JAN 78 254 EDITION OF 1 APR 71 IS OBSOLETE. ALSO REPLACES DD FORM 254c WHICH IS OBSOLETE

13a. Information pertaining to classified contracts or projects, even though such information is considered unclassified, shall not be released for publi dissemination except as provided by the Industrial Security Manual *(paragraph 5o and Appendix IX).*

b. Proposed public releases shall be submitted for approval prior to release ☐ Direct ☐ Through *(Specify):*

to the Directorate For Freedom of Information and Security Review, Office of the Assistant Secretary of Defense *(Public Affairs)* * for review in accordance with paragraph 5o of the Industrial Security Manual.

** In the case of non-DoD User Agencies, see footnote, paragraph 5o, Industrial Security Manual.*

14. Security Classification Specifications for this solicitation/contract are identified below *"X" applicable box(es) and supply attachments as required.* Any narrative or classification guide(s) furnished shall be annotated or have information appended to clearly and precisely identify each element of information which requires a classification. When a classification guide is utilized, that portion of the guide(s) pertaining to the specific contractual effort may be extracted and furnished the contractor. When a total guide(s) is utilized, each individual portion of the guide(s) which pertains to the contractual effort shall be clearly identified in Item 14b. The following information must be provided for each item of classified information identified in an extract or guide:

(I) Category of classification. (II) Date or event for declassification or review for declassification, and (III) The date or event for downgrading *(if applicable).*

The official named in Item 12b. is responsible for furnishing the contractor copies of all guides and changes thereto that are made a part of this specification. Classified information may be attached or furnished under separate cover.

☐ a. A completed narrative is (1) ☐ attached, or (2) ☐ transmitted under separate cover and made a part of this specification.

☐ b. The following classification guide(s) is made a part of this specification and is (1) ☐ attached, or (2) ☐ transmitted under separa cover. *(List guides under Item 15 or in an attachment by title, reference number and date).*

☐ c. Service-type contract/subcontract. *(Specify instructions in accordance with ISM 1500, as appropriate.)*

☐ d. "X" only if this is a final specification and Item b is a "NO" answer. In response to the contractor's request dated ________ retention of the identified classified material is authorized for a period of ________

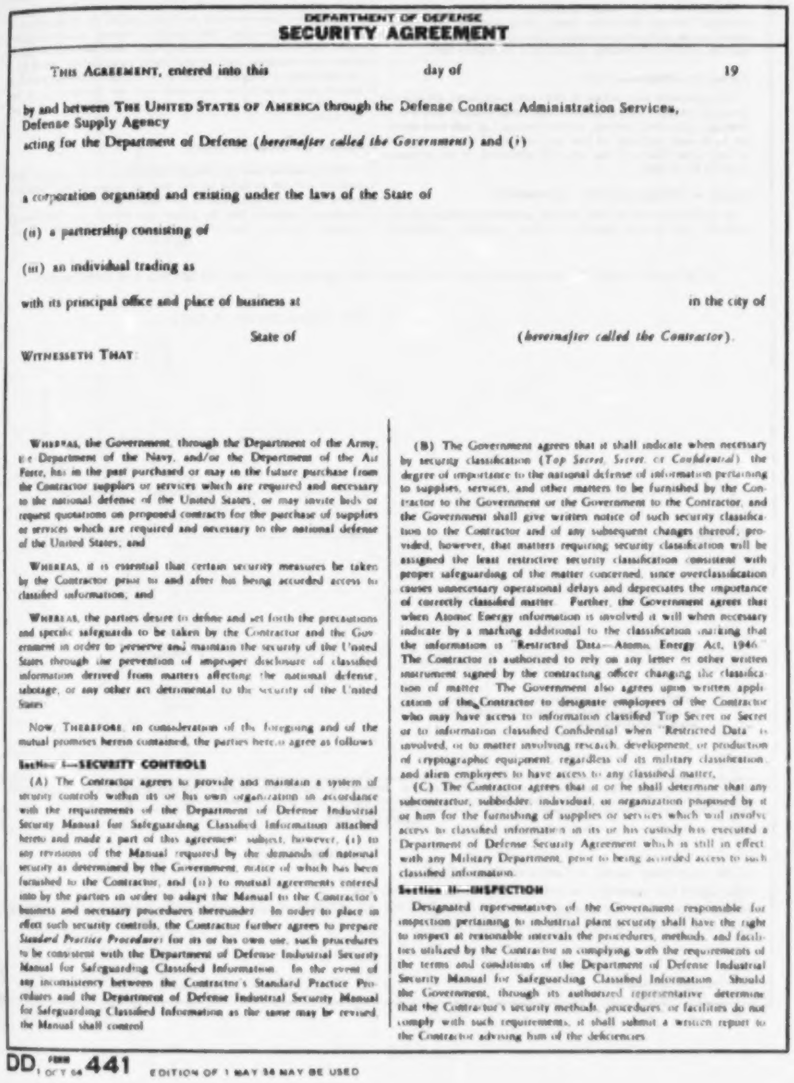
☐ e. Annual review of this DD Form 254 is required. If "X'd" provide date such review is due: ________

15. Remarks *(Whenever possible, illustrate proper classification, declassification, and if applicable, downgrading instructions).*

16a. Contract Security Classification Specifications for Subcontracts issuing from this contract will be approved by the Office named in Item 16e below, o by the prime contractor, as authorized. This Contract Security Classification Specification and attachments referenced herein are approved by the Agency Contracting Officer or his Representative named in Item 16b below.

REQUIRED DISTRIBUTION: ☐ Prime Contractor *(Item 7a)* ☐ Cognizant Security Office *(Item 7c)* ☐ Administrative Contracting Office *(Item 16e)* ☐ Quality Assurance Representative ☐ Subcontractor *(Item 8a)* ☐ Cognizant Security Office *(Item 8c)* ☐ Program/Project Manager *(Item 12b)* ☐ U. S. Activity Responsible for Overseas Security Administration	b. Typed name and title of approving official c. Signature d. Approving official's activity address and Zip Code
ADDITIONAL DISTRIBUTION: ☐ ☐ ☐	e. Name, address and Zip Code of Administrative Contracting Office

53.303–DD–441 Department of Defense DD Form 441, Security Agreement.



DEPARTMENT OF DEFENSE

SECURITY AGREEMENT

THIS AGREEMENT, entered into this day of 19

by and between THE UNITED STATES OF AMERICA through the Defense Contract Administration Services, Defense Supply Agency

acting for the Department of Defense (*hereinafter called the Government*) and (i)

a corporation organized and existing under the laws of the State of

(ii) a partnership consisting of

(iii) an individual trading as

with its principal office and place of business at in the city of

State of (*hereinafter called the Contractor*).

WITNESSETH THAT:

WHEREAS, the Government, through the Department of the Army, the Department of the Navy, and/or the Department of the Air Force, has in the past purchased or may in the future purchase from the Contractor supplies or services which are required and necessary to the national defense of the United States, or may invite bids or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States; and

WHEREAS, it is essential that certain security measures be taken by the Contractor prior to and after his being accorded access to classified information; and

WHEREAS, the parties desire to define and set forth the precautions and specific safeguards to be taken by the Contractor and the Government in order to preserve and maintain the security of the United States through the prevention of improper disclosure of classified information derived from matters affecting the national defense, sabotage, or any other act detrimental to the security of the United States:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

Section I—SECURITY CONTROLS

(A) The Contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and made a part of this agreement, subject, however, (i) to any revisions of the Manual required by the demands of national security as determined by the Government, notice of which has been furnished to the Contractor, and (ii) to mutual agreements entered into by the parties in order to adapt the Manual to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls, the Contractor further agrees to prepare *Standard Practice Procedures* for its or his own use, such procedures to be consistent with the Department of Defense Industrial Security Manual for Safeguarding Classified Information. In the event of any inconsistency between the Contractor's Standard Practice Procedures and the Department of Defense Industrial Security Manual for Safeguarding Classified Information as the same may be revised, the Manual shall control.

(B) The Government agrees that it shall indicate when necessary by security classification (*Top Secret, Secret, or Confidential*) the degree of importance to the national defense of information pertaining to supplies, services, and other matters to be furnished by the Contractor to the Government or the Government to the Contractor, and the Government shall give written notice of such security classification to the Contractor and of any subsequent changes thereof; provided, however, that matters requiring security classification will be assigned the least restrictive security classification consistent with proper safeguarding of the matter concerned, since overclassification causes unnecessary operational delays and depreciates the importance of correctly classified matter. Further, the Government agrees that when Atomic Energy information is involved it will when necessary indicate by a marking additional to the classification marking that the information is "Restricted Data—Atomic Energy Act, 1946." The Contractor is authorized to rely on any letter or other written instrument signed by the contracting officer changing the classification of matter. The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to information classified Top Secret or Secret or to information classified Confidential when "Restricted Data" is involved, or to matter involving research, development, or production of cryptographic equipment, regardless of its military classification, and alien employees to have access to any classified matter.

(C) The Contractor agrees that it or he shall determine that any subcontractor, subbidder, individual, or organization proposed by it or him for the furnishing of supplies or services which will involve access to classified information in its or his custody has executed a Department of Defense Security Agreement which is still in effect with any Military Department, prior to being accorded access to such classified information.

Section II—INSPECTION

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of the Department of Defense Industrial Security Manual for Safeguarding Classified Information. Should the Government, through its authorized representative, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it shall submit a written report to the Contractor advising him of the deficiencies.

DD FORM 1 OCT 64 441 EDITION OF 1 MAY 54 MAY BE USED

Section III—MODIFICATION

Modification of this security agreement (*as distinguished from the Industrial Security Manual for Safeguarding Classified Information, which may be modified in accordance with section I of this agreement*) may be made only by written agreement of the parties hereto.

Section IV—TERMINATION

This agreement shall remain in effect until terminated through the giving of 30 days' written notice to the other party of intention to terminate; provided, however, notwithstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the Contractor has classified information in his possession or under his control.

Section V—PRIOR SECURITY AGREEMENTS

As of the date hereof, this security agreement replaces and succeeds any and all prior security or secrecy agreements, understandings, and representations with respect to the subject matter included herein, entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force: *Provided*, That the term "security or secrecy agreements, understandings, and representations" shall not include agreements, understandings, and representations contained in contracts for the furnishing of supplies or services to the Government heretofore entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force.

Section VI—SECURITY COSTS

This agreement does not obligate Government funds, and the Government shall not be liable for any costs or claims of the Contractor arising out of this agreement or instructions issued hereunder. It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By ____________________

____
(Authorized representative of the Government)

____
(Corporation)

WITNESS

By ____________________

____

____

____

____
(Firm)

NOTE.—In case of corporation, witnesses not required but certificate below must be completed. Type or print names under all signatures.

____
(Title)

____
(Address)

NOTE.—Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the agreement and the certificate.

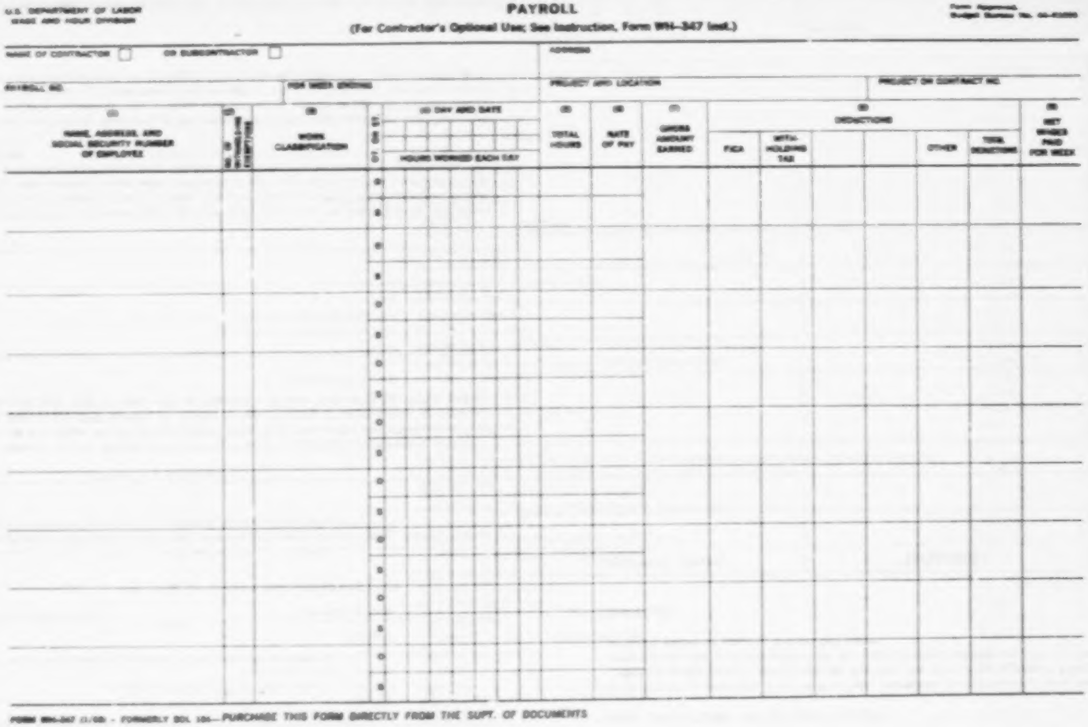
CERTIFICATE

I, ____________________, certify that I am the ____________________
of the corporation named as Contractor herein; that ____________________
who signed this agreement on behalf of the Contractor, was then ____________________
of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(*Corporate Seal*)

____
(Signature)

53.303-WH-347 Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).



U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL
(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Form Approved.
Budget Bureau No. [illegible]

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐

ADDRESS

PAYROLL NO.

FOR WEEK ENDING

PROJECT AND LOCATION

PROJECT OR CONTRACT NO.

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	
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FORM WH-347 (1/68) - FORMERLY SOL 10A—PURCHASE THIS FORM DIRECTLY FROM THE SUPT. OF DOCUMENTS

I, ______________________ ______________________
(Name of signatory party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by ______________________

______________________ on the ______________________
(Contractor or subcontractor) (Building or work)

______________________; that during the payroll period commencing on the ______

day of ______________, 19____, and ending the ____ day of ______________, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

______________________ from the full
(Contractor or subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

____

____

____

____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ —In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ —Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

FAR INDEX

CONTEXT PRECEDING THE KEY WORD	KEY WORD, AND CONTEXT FOLLOWING THE KEY WORD	FAR REFERENCE
Section	8(a) Award.	52.219-17
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Table of OMB Control Numbers

The OMB control numbers for chapter 1 of title 48 were consolidated into section 1.105. Section 1.105 is reprinted below for the convenience of the user.

1.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

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[49 FR 12973, Mar. 30, 1984]

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